

**207 Waiver**  
**Title**  
**Legal Description**  
**Policy or Appeals**  
**Correspondence Between Legal & Staff**  
**Letter of Authorization**

**When Recorded Return to:**

City of Scottsdale  
Current Planning Services  
7447 E. Indian School Rd., Suite 105  
Scottsdale, AZ 85251

Agreement No. 2018-XXX-COS

**DEVELOPMENT AGREEMENT**

This Development Agreement (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Stockdale Galleria Land Owner, LLC, a Delaware limited liability company ("Developer"), and the City of Scottsdale, Arizona, an Arizona municipal corporation ("City"), collectively referred to as "the Parties".

**RECITALS**

A. Arizona Revised Statutes §9-500.05 authorizes the City to enter into a Development Agreement related to real property located inside the incorporated area of the City with a landowner or other person having an interest in the real property.

B. The Property that is the subject of this Agreement consists of approximately 1.979 net acres located at 4419 North Scottsdale Road, 7223 East Shoeman Lane, 7233 East Shoeman Lane, and 7235 East Shoeman Lane, Scottsdale, Arizona (the "Property"). The Property is situated within the incorporated boundaries of the City and is more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference.

C. The Developer is the owner of the Property described in **Exhibit A**.

D. Developer plans to develop the Property by constructing a 278,015+/- square foot commercial building and parking structure ("the Project").

E. Developer desires to utilize available bonus provisions under the Scottsdale Revised City Code, to increase the gross floor area of the Project by 120,144 square feet and obtain an additional 33 feet of Building Height by constructing the development in accordance with the City of Scottsdale's code, constructing certain Special Improvements in the East Shoeman Lane right-of-way, and paying to the City Two Hundred Sixty Eight Thousand Seven Hundred Ninety Five Dollars and forty-three cents (\$268,795.43) to be deposited into the City's Downtown Special Improvement Trust Fund to be used by the City for the future construction of Special Improvements that achieve public benefits in



the Downtown Area specifically within boundaries of the area depicted by the bold outline on **Exhibit "B"** (the "Future Special and Parking Improvement Area") attached hereto and incorporated herein by reference.

F. In order to complete the Project, the Developer has made Development Applications to the City for a Zoning District Map Amendment, case number 7-ZN-2015#2.

G. The Parties understand that following the conclusion of the required public hearings the Scottsdale City Council may vote to deny or approve the Developer's Development Application requests for the Zoning District Map Amendment. This Agreement does not require the City Council to vote in any particular way.

H. The Developer will commission and install original artwork on the Property in accordance with the Scottsdale Revised Code.

I. Developer and City acknowledge and agree that development of the Property will benefit the City's residents and the Property.

J. This Agreement is consistent with the portions of the City's General Plan applicable to the Property on the date of this Agreement.

K. The City's governing body has authorized execution of this Agreement by Resolution No. 10357.

## **AGREEMENT**

**NOW, THEREFORE,** in consideration of the foregoing Recitals and representations and the mutual covenants and conditions in this Agreement, The Parties agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated into this Agreement by this reference.

2. Effective date. This agreement shall be effective upon execution by the parties.

3. Property Interest of the Developer. Developer warrants that it is the fee title owner of the Property and that the Property is located within the municipal limits of the City.

4. Developers Bonus and Special Improvement Obligations.

4.1 Bonus Development Standards. The Property is zoned Downtown/Downtown Multiple Use Type-3, Planned Block Development, Downtown Overlay (D/DMU-2, PBD, DO) zoning which includes a Development Plan and Bonus

Development Standards. Developer will apply for an amendment to the existing Development Plan and existing Bonus Development Standards.

4.2 Bonus Provisions. Developer shall be entitled to utilize available bonus provisions under Scottsdale Revised City Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplemental Districts, Section 6.1310 to obtain an increase in gross floor area and obtain additional building height inclusive of roof top appurtenances not to exceed the amount approved in Zoning District Map Amendment, case number 7-ZN-2015#2, for the Project, if Developer:

4.2.1 Constructs those certain Special Improvements in the East Shoeman Lane right-of-way, described on **Exhibit “C”** (the “East Shoeman Lane Street Improvements”), pursuant to Section 4.3 below; and

4.2.2 Pays Two Hundred Sixty-Eight Thousand Seven Hundred Ninety-Five Dollars and forty-three cents (\$268,795.43) into the City’s Downtown Special Improvement Trust Fund (the “In-Lieu Payment for Special Improvements”).

4.3 Additional Terms Related to the Special Improvements in the East Shoeman Lane right-of-way.

4.3.1 Developer shall pay for any and all costs and expenses of designing, engineering, permitting, constructing and installing the East Shoeman Lane Street Improvements; such costs and expenses (which shall include, without limitation, costs of labor and materials and professional and consultant fees) shall be a minimum of Four Hundred Sixteen Thousand Two Hundred Seventy Dollars and twenty-five cents (\$416,270.25).

4.3.2 The Developer shall maintain the sidewalks, hardscape, landscape, bicycle racks, pedestrian amenities, and pedestrian lighting improvements constructed in the East Shoeman Lane right-of-way as a condition of obtaining the Special Improvement bonus. The City shall own the East Shoeman Lane Street Improvements after the City has accepted them as complete and final.

4.4 Developer’s Additional Terms Related to the In-lieu Payment for Special Improvements.

4.4.1 Prior to the issuance of any permit to construct any vertical improvements, above or below grade, excluding excavation, the Developer shall pay to the City the In-Lieu Payment for Special Improvements. However, the last day the payment can be made without an increase is December 31, 2019, and any unpaid amount after December 31, 2019 is subject to being increased as set forth in Section 4.4.2.



4.4.2 If all or any part of the In-Lieu Payment for Special Improvements has not been paid by December 31, 2019, any unpaid amount shall increase on January 1, 2019, and annually thereafter, by an escalator factor of 3.5% in accordance with the following formula:

$$A = P(1 + 0.035)^{CY-2019(?)}$$

Where:

A = Dollar amount to be paid

P= Unpaid amount of In-Lieu Payment for Special Improvements

CY = Current year

4.5 City's Additional Terms Related to the use of In-Lieu Payment for Special Improvements.

4.5.1 The City shall deposit the In-Lieu Payment for Special Improvements into the City's Downtown Special Improvement Trust Fund.

4.5.2 The City shall use the In-Lieu Payment for Special Improvements to construct future Special Improvements that serve as a public benefit within the Future Special and Parking Improvement Area.

4.5.3 The City agrees to own and maintain the Special Improvements constructed by the City with the In-Lieu Payment for Special Improvements.

4.6 Failure to Pay. All amounts set forth in paragraphs 4.2.2 and 4.4.1 of this Agreement shall be paid no later than 12:00 noon on December 31, 2020. If Developer has not made full payment of all amounts, the City shall issue a written notice by regular U.S. Mail to Developer containing a calculation of all outstanding amounts due, including any increases as a result of escalation. Developer shall pay in full the outstanding amounts to the City by cashier check no later than thirty (30) days from the date of the letter. If payment has not been received by the City in accordance with the demand for payment set forth in the letter, the City will suspend all certificates of occupancy issued for the Project and all operations on the Property shall cease until full payment has been made and the certificates have been reissued.

5. Developer's Removal of Public Parking.

5.1 Payment Amount for the Removal of Public Parking. As part of the development of the Project, Developer may remove and not replace up to eighteen (18) existing public parking spaces in the East Shoeman Lane right-of-way adjacent to the Property (each, a "Removed Space"). Developer shall (i) pay the City twelve thousand nine hundred fifty-eight dollars and thirteen cents (\$12,958.13) per Removed Space as compensation for the City's loss of that public parking space.

5.2 Payment Due. Prior to the issuance to Developer of any permit to



construct any improvements that would cause the elimination of any existing public parking spaces in the East Shoeman Lane right-of-way, Developer shall pay to the City the amount specified in Section 5.1. Any payment incurred pursuant to Section 5.1, and payable after January 1, 2020, shall increase in accordance with the fee schedule for in-lieu parking credits, Resolution No. 8153, beginning on January 1, 2020, and the first day of each year thereafter, until paid.

5.3 Parking Improvement Account. The City agrees to deposit the amount paid by the Developer set forth in paragraph 5.1 into a new City account titled the "Downtown Drinkwater Neighborhood Parking Structure Improvements" (the "DDNPSI").

5.4 City's Use of Funds. The City agrees to use the funds deposited into the DDNPSI account to develop a future parking structure within the area as depicted by the bold outline shown on **Exhibit "B"** incorporated herein the "Future Special and Parking Improvement Area".

5.5 Parking Credits. The Developer and the City agree that the Developer will not receive, and the Property will not be assigned, parking space credits for any amount paid by Developer for the removal of public parking spaces in the East Shoeman Lane right-of-way.

6. Supplemental Parking Plan.

6.1 Requirement to provide a Supplemental Parking Plan. If more than ninety-seven percent (97%) of the Office Space Parking is occupied for more than six (6) consecutive hours during three (3) Work Days in a one-month period (sometimes herein called "Full Capacity") (as measured in a Parking Occupancy Assessment, defined below in section 6.2.1, on the terms and conditions of this Section 6), upon written request from the City Manager, the Developer shall provide a supplemental parking plan to the City Manager within fifteen (15) days of the request for approval. For purposes of this Section 6, (a) "occupied" is defined as a parking space that has a vehicle in it, or is physically obstructed in a manner that prevents a vehicle from being parked in it, or is reserved and is vacant at the time of the parking count, (b) "Work Days" is defined as any day Monday through Friday, the hours from 8:00 A.M. to 5:00 P.M., and, (c) a measurement of Office Space Parking shall be referred to as a "Parking Occupancy Assessment."

6.2 Parking Occupancy Assessments.

6.2.1 The City's rights to conduct Parking Occupancy Assessments shall commence when seventy-five percent (75%) of the total gross leasable area of the Project has been issued a Certificate-of-Occupancy. The City Manager shall notify the Developer in writing when Parking Occupancy Assessments are necessary to be conducted. A Parking Occupancy Assessment shall consist of the initial count of parking spaces and a verification recount within five days of the initial count. The verification recount shall be conducted by the City without additional notice to the Developer.



6.2.2 The Developer shall have the discretion of choosing the method of conducting each Parking Occupancy Assessment between (i) the City, or (ii) by a third party Traffic Engineer registered in the State of Arizona. In the written notice to the Developer in accordance with 6.2.1, the City Manager shall provide a minimum of three (3) third party Traffic Engineers that the developer may approve from to conduct the third party Parking Occupancy Assessments. Within seven (7) days of a written notice in accordance with 6.2.1, the Developer shall respond in writing indicating the chosen method to conduct the Parking Occupancy Assessment, and when applicable, the Developer's choice of the third party Traffic Engineer from the list provide by the City Manager. The Developer shall not withhold its approval of one of the third party Traffic Engineers provided by the City. Within thirty (30) days of the City's delivery to Developer, of a written notice with invoices substantiating charges by the elected Traffic Engineer for a Parking Occupancy Assessments, the Developer shall reimburse the City for all reasonable, out-of-pocket, third-party costs of conducting the Parking Occupancy Assessment.

6.2.3 Upon the City Manager providing the Developer a minimum two (2) Work Days written notice, the Developer shall grant the party conducting the Parking Occupancy Assessment and his/her employee(s) reasonable access to all parking facilities within the Project that include Office Space Parking.

6.2.4 The City Manager shall select the Work Days that the assessment is to be conducted the ("Assessment Days"); provided, however, that the Assessment days may not be consecutive and must be three (3) different days of the week.

6.2.5 If the Parking Occupancy Assessment results give the City the right to request a Supplemental Parking Plan pursuant to Section 6.1, the City shall deliver written notice to Developer permitting Developer thirty (30) days to cure the parking condition prior to the City delivering written notice demanding a Supplemental Parking Plan. On or before the expiration of such thirty (30) day cure period, Developer may request that the City perform another Parking Occupancy Assessment; after which, if the newly performed Parking Occupancy Assessment results in a finding of continued Full Capacity, the City may deliver to Developer written request for a Supplemental Parking Plan.

6.2.6 The City shall not perform more than three (3) Parking Occupancy Assessments in any twelve (12) month period; provided that Parking Occupancy Assessments requested by Developer shall not count toward such maximum.

6.3 Supplemental Parking Plan. The supplemental parking plan shall require the Developer, in its discretion, to either:

6.3.1 secure additional parking spaces for the Project by leasing



parking spaces from a public or quasi-public parking facility within nine hundred feet of the Project. If a public or quasi-public parking facility is not available at the time that supplemental parking is required, the City Manager shall allow the Developer to secure additional parking spaces from another property within two thousand six hundred forty (2,640) feet of the Property which shall be through a lease agreement with the property owner of the property that has parking available which is not otherwise required by and accounted for pursuant to the City of Scottsdale's Zoning Ordinance. The additional parking spaces under the supplemental parking plan that are leased by the Developer shall be an amount that decreases the occupied Office Space Parking to less than Full Capacity. If a public or quasi-public parking facility becomes available after the time that supplemental parking is required, any private parking leases in effect at that time shall not be renewed, and subsequent leases if necessary, shall be from the public or quasi-public facility; or

6.3.2 deliver to the City for its review and approval (consent not to be unreasonably withheld), and agree to execute, a parking management plan to reduce parking in the parking structure to less than Full Capacity; the parking management plan may incorporate concepts including, but not limited to (a) free or subsidized employee bus passes, (b) carpool and van pool programs, and/or (c) alternative transit incentives.

6.3.3 After a Supplemental Parking Plan has been agreed upon by City and Developer, Developer may at any time, and from time to time, request that the City perform another Parking Occupancy Assessment. If the re-assessment results find that parking is less than Full Capacity, the Developer may terminate any parking Lease.

6.4 Cost of providing and implementing the Supplemental Parking Plan. Developer shall pay all costs associated with providing and implementing the Supplemental Parking Plan; provided that, notwithstanding the foregoing, and upon verification by the City Manager, the Developer shall have no obligation to lease parking if the fees, rent and other charges for such spaces exceed fair market rate. If the City Manager verifies, in its reasonable discretion, that the lease parking spaces in the public or quasi-public parking facility exceed fair market rate, the Developer may lease available private parking in accordance with Section 6.2.

6.5 Modifications to the Supplemental Parking Plan. The City Manager may approve modifications to the Supplemental Parking Plan provided that the modifications are designed to keep the parking structure under Full Capacity.

6.6 Term of Supplemental Parking Plan Requirement and Other Terms of Section 6. Notwithstanding anything to the contrary herein (or in any Supplemental Parking Plan), Developer's obligations and the City's rights in this Section 6 (and any Supplemental Parking Plan) shall automatically expire, without need for any further notice, on the earlier of: (a) four (4) years after the date of the first Certificate of Occupancy is issued at the Property for the Office Area (defined below), (b) on the date that a Certificate-of-Occupancy is issued for a parking structure constructed on the City-



owned property at or near East Stetson Drive, and in between North Wells Fargo Avenue and North Civic Center Boulevard, with the Maricopa County Assessor's Parcel Numbers of 173-41-115 and 173-41-116A, or (c) Developer constructs a fourth level of parking (which may be underground).

7. Artwork.

7.1 Artwork Requirement. Developer shall commission and install an original artwork on the Property in accordance with Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplementary Districts, Section 6.1309. – Cultural Improvements Program requirements. And Article VII, - General Provisions, Section 7.1000. – Cultural Improvements Program, through Section 7.1017.

7.2 Artwork Cost Requirement. The minimum cost of the artwork shall be calculated in accordance with Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplementary Districts, Section 6.1309. – Cultural Improvements Program requirements. And Article VII, - General Provisions, Section 7.1004. – General Provisions.

7.3 Conceptual Art Plan Approval.

7.3.1 The Developer and the City agree that the Developer may defer approval of the Conceptual Art Plan from the Cultural Council and Development Review Board in accordance with the Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance, Article VII, - General Provisions, Section 7.1014. – Deferment of artwork of the Cultural Improvements Program.

7.3.2 The Developer agrees that the approval of the Conceptual Art Plan from the Cultural Council and from the Development Review Board shall be obtained prior to the issuance of any building permit to construct any vertical improvements, above or below grade, excluding excavation, on the Property.

7.4 Artwork Installation and Certificate of Completion.

7.4.1 City and the Developer agree that the Developer may obtain a Temporary Certificate-of-Occupancy, as determined by the City's Building Official, for the parking garage that is connected to the Project prior to the Certificate of Completion for the artwork so that the garage may be utilized during construction of the Project by the Developer's construction contractor and employees that are associated with construction of the Project.

7.4.2 The Developer agrees that the City may revoke any Temporary Certificate-of-Occupancy issued by the City's Building Official for the parking garage that is connected to the Project if the Developer fails to install the artwork prior to obtaining a final site inspection for the Project.



7.4.3 Exclusive of paragraph 7.4.1, Developer agrees to obtain a Certificate of Completion from the Zoning Administrator for the installation of the Artwork prior to the issuance of a Temporary Certificate-of-Occupancy, Final Site Inspection, Certification of Shell Building or Certificate-of-Occupancy for the Project.

7.5 Ownership and Maintenance of Artwork. The current Property owner(s) and its successors and assigns shall own and maintain the Artwork in accordance with the Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance.

8. Project Parking Space Distribution. <sup>REMOVED?</sup> Developer shall provide a minimum of nine hundred fifty-nine (959) parking spaces (the "Total Parking Spaces") at the Property. Eight hundred eighty-four (884) parking spaces (the "Office Space Parking") of the Total Parking Spaces provided shall be provided for the office area (the "Office Area") (approximately 262,415 square feet) of the Project, and fifty-two (52) parking spaces ("Retail Parking Spaces") of the Total Parking Spaces shall be provided for the retail area (approximately 15,600 square feet) of the Project.

a. Retail Parking Spaces. The Retail Parking Spaces:

- a) Shall be located on the grade level of the parking garage, and only those Retail Parking Spaces that do not fit on grade level of parking garage may be located on 1st level above grade and on vehicle ramp from the grade level 1st level above grade of the parking garage;
- b) shall be nearest to the East Shoeman Lane vehicle entrance/exit;
- c) shall not be restricted by gate access or other restrictive measure, except for the maximum amount of time that a vehicle may occupy the parking space;
- d) shall not, for the purpose of counting Retail Parking Spaces, include more than 2 accessible parking spaces; and
- e) shall include, for each Removed Space, one Retail Parking Space that has a maximum 3-hour time parking limit.

b. Modification to the Distribution of Parking Spaces. The City Manager or designee may approve alternative distribution of the parking spaces for the retail and office areas, provided that a minimum of one (1) parking space is provided for each two hundred fifty (250) square feet of retail gross floor area.

9. Compliance with all Laws. Developer shall develop the Property in compliance with all Federal, State, County and local laws, ordinances, rules, regulations, permit requirements, or any other policies of the City.

10. General Provisions.

10.1 Notices. All notices, filings, consents, approvals, and other communications provided for herein or given in connection herewith ("notices") shall be validly given, filed, made, delivered, or served if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City:           The City of Scottsdale  
                                  Attention: City Attorney  
                                  3939 North Drinkwater Boulevard  
                                  Scottsdale, Arizona 85251

Copy to:                 City of Scottsdale  
                                  Attention: Zoning Administrator  
                                  Planning and Development Services  
                                  Department  
                                  7447 E. Indian School Rd., Suite 105  
                                  Scottsdale, AZ 85251

                                  City of Scottsdale  
                                  Attention: City Manager  
                                  3939 North Drinkwater Boulevard  
                                  Scottsdale, AZ 85251

If to Developer:       Stockdale Galleria Land Owner, LLC  
                                  Attention: Shahrod Yari  
                                  4343 N. Scottsdale Rd., Suite 180  
                                  Scottsdale, AZ 85251

Copy to:                 Withey Morris, PLC  
                                  Attention: Jason Morris  
                                  2525 East Arizona Biltmore Circle, Suite A-212  
                                  Phoenix, AZ 85016

10.2 Mailing Effective. Notices given by registered or certified mail shall be deemed delivered 72 hours following deposit in the U.S. Postal Service in the manner set forth above.

10.3 Approvals. When a party's consent is required pursuant to this



agreement, the consenting party shall not unreasonably withhold, delay or condition its approval.

10.4 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement

10.5 Headings. The descriptive headings of the paragraphs of the Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

10.6 Authority. The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement.

10.7 Entire Agreement. The Agreement, including exhibits, constitutes the entire Agreement between the parties.

10.8 Severability. If any provision of this Agreement limiting the uses of the Property is declared void or unenforceable, then the entire Agreement shall be void. If any other provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the fundamental purposes of this Agreement are not defeated by such severability.

10.9 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The Parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Maricopa County, Arizona, and the Parties hereby waive any right to object to such venue.

10.10 Recordation. This Agreement, and any amendment or cancellation of this Agreement, shall be recorded, in its entirety, in the official records the county recorder's office in Maricopa County, Arizona, no later than ten (10) days after the effective date of this Agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

10.11 Remedies. If any party to this Agreement breaches any provision of the Agreement, the non-defaulting party shall be entitled to all remedies available at both law and in equity, including specific performance.

10.12 Attorneys' Fees and Costs. If any party brings a legal action either because of a breach of the Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.

10.13 Binding Effect. The benefits and burdens of this Agreement shall run with the Property and be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest, and assigns. This Agreement shall be incorporated by reference in any instrument purporting to convey an interest in the Property.

10.14 Third Parties. There are no third party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

10.15 No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

10.16 Contract Administrator. The City's contract administrator for this Agreement shall be City Manager, for the City of Scottsdale, or designee.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

THE CITY OF SCOTTSDALE:  
an Arizona municipal corporation

ATTEST:

By: \_\_\_\_\_  
Carolyn Jagger, City Clerk

By: \_\_\_\_\_  
W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Joe Padilla, Deputy City Attorney

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by W. J. "Jim" Lane, Mayor of the City of Scottsdale, Arizona, a municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:



**DEVELOPER:**

Stockdale Galleria Land Owner, LLC, a Delaware Limited Liability Company

By: \_\_\_\_\_

Shahrod Yari

Its: Managing Partner

STATE OF \_\_\_\_\_ )

) ss.

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Shahrod Yari, Managing Partner of Stockdale Galleria Land Owner, LLC, a Delaware Limited Liability Corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**Exhibit A**

The Property

[see attached]



**MARQUEE  
LEGISLATIVE DRAFT OF  
DEVELOPMENT STANDARDS**

**Sec. 5.3004. Use regulations.**

**ALL USES ALLOWED IN THE PBD DISTRICT**

**Sec. 5.3006. Property development standards.**

**B. Density, Gross Floor Area Ratio (GFAR), and Building Height Maximum.**

1. Density and GFAR maximum are shown in Table 5.3006.B.
2. The building height maximum is shown in Table 5.3006.B., except as provided in Subsection 5.3006.B.3.
3. The additional height regulations of Article VII. shall not apply.

**Table 5.3006.B.**

**Density, Gross Floor Area Ratio (GFAR), and Building Height Maximums**

Development Type	Building Height Maximum <sup>(1)</sup>	GFAR Maximum without Bonus(es)	GFAR Maximum with Bonus(es) <sup>(2)</sup>	Density Maximum (per acre of gross lot area)
Type 3	84 feet 150'-0"	1.3	2.0	50 dwelling units

**Notes:**

1. ~~Inclusive of all roof top appurtenances.~~ **MEASURED FROM DATUM LINE AT 1'-0" ABOVE THE AVERAGE TOP OF CURB ELEVATION**  
**EXCLUDES ROOFTOP APPURTENANCES.**

**A. MAXIMUM HEIGHT FOR ROOFTOP APPURTENANCES: 6 FEET.**

**B. MAXIMUM COVERAGE FOR ROOFTOP APPURTENANCES: 20% OF THE ROOFTOP.**

**C. MINIMUM SETBACK FOR ROOFTOP APPURTENANCES: 15 FEET FROM ALL SIDES OF THE BUILDING**

**2. See Table 5.3008.B.**

**C. Setbacks from public streets, except alleys.**

1. The minimum setback from public streets (except alleys) is shown in Table 5.3006.C. The setback is measured from the back of curb.

Table 5.3006.C. Minimum Setback for Buildings Adjacent to Public Streets, except alleys	
Street	Minimum Building

	Setback
North Scottsdale Road in Type 3 Area	40 16 feet 9 INCHES
<b>ALL OTHER PUBLIC STREETS AND PUBLIC STREET SEGMENTS IN THE TYPE 3 AREA</b>	<b>13 feet 6 INCHES</b>
Note: See the Downtown Plan Urban Design & Architectural Guidelines for locations of the public streets and setbacks above.	

2. The adjustment of front yard requirements in Article VII. does not apply.

**D. Setbacks from major intersections.**

1. On each corner of an intersection designated as an Old Town Major Intersection in the Downtown Plan, the property owner shall provide at least 2,500 square feet of open space at grade and up to a height of 30 feet. The open space shall be located within 70 feet of the intersection of the property lines at the corner. Those major intersections include:
  - a. East Camelback Road and North Goldwater Boulevard.
  - b. East Camelback Road and North Scottsdale Road
  - c. East Indian School Road and North Goldwater Boulevard.
  - d. East Indian School Road and North Drinkwater Boulevard.
  - e. East Second Street and North Goldwater Boulevard.
  - f. East Second Street and North Drinkwater Boulevard.

**E. Setbacks from Single-family Residential districts shown on Table 4.100.A., or the portion of a Planned Community (P-C) with an underlying zoning district comparable to the single-family residential districts shown on Table 4.100.A., or any Planned Residential Development (PRD) District.**

1. The minimum setback is:
  - a. Ten feet from a single-family residential district shown on Table 4.100.A., or the portion of a Planned Community (P-C) with an underlying zoning district comparable to the single-family residential districts shown on Table 4.100.A., or any Planned Residential Development (PRD) District.
  - b. Ten feet from an alley that abuts a property zoned with a single-family residential district shown on Table 4.100.A., or the portion of a Planned Community (P-C) with an underlying zoning district comparable to the single-family residential districts shown on Table 4.100.A., or any Planned Residential Development (PRD) District, measured from the center of the alley.
  - c. Exception. The setback from a single-family residential district shown on Table 4.100.A., or the portion of a Planned Community (P-C) with an underlying zoning district comparable to the single-family residential districts shown on Table 4.100.A., or any Planned Residential Development (PRD) District, shall not apply to properties abutting the Arizona Canal.
2. Walls and fences up to a height of eight (8) feet are allowed on the property line, or within the required setback above, if the wall or fence is at least ten (10) feet from the center of an alley.

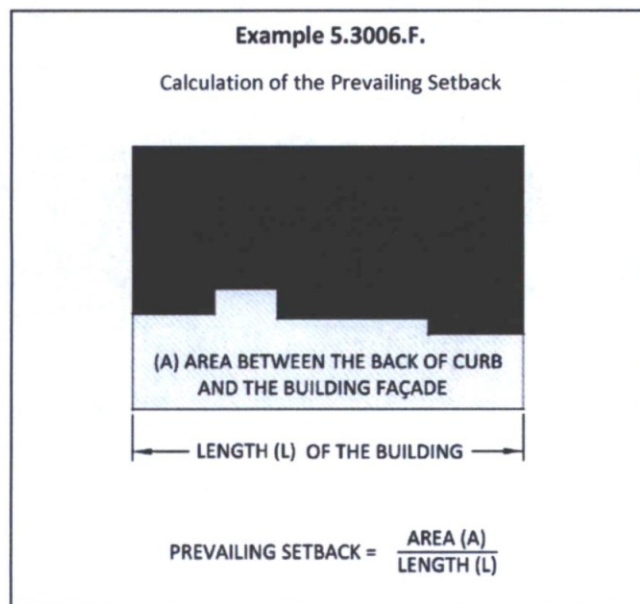
**F. Building location.**



1. A building adjacent to a public street (except alleys) shall be located as follows:
  - b. In a Type 2 Area, a Type 2.5 Area or a Type 3 Area, at least twenty-five (25) percent of the:
    - i. ~~Length of the building façade shall be located at the minimum setback;~~
    - ii. Length of a building façade at grade and up to a height of ~~thirty (30)~~ **TWELVE (12)** feet shall be set back at least ten (10) additional feet; **COLUMNS AND CANOPIES ARE EXCLUDED AND MAY BE LOCATED WITHIN THIS ADDITIONAL SETBACK** and
    - iii. ~~Area of the building façade at grade and up to a height of thirty (30) feet shall be located at the minimum setback.~~
2. In a Type 2 Area, a Type 2.5 Area, or a Type 3 Area, a building with a building façade length of two hundred (200) feet or more shall be located to achieve a prevailing setback **AT GRADE** shown in Table 5.3006.F. The building façades on a corner lot are calculated separately, and not added together.

Table 5.3006.F. Prevailing Setbacks for Buildings Adjacent to a Public Street (except alleys)	
Street	Prevailing Setback
All other public street and public street segments	Between 20 <b>5</b> and 35 Feet <b>AT GRADE</b>

3. The prevailing setback is equal to the area between the back of curb and the building façade, divided by the length of the building, as shown in Example 5.3006.F.



**G. Private outdoor living space.**

1. All dwelling units shall include private outdoor living space located beside the dwelling unit.

2. Each private outdoor living space shall be at least six (6) feet deep and sixty (60) square feet in area.

H. *Stepbacks.*

4. Property in a Type 3 Area not described above: ~~The stepback plane shall incline at a ratio of 2:1, beginning forty five (45) feet above (i) the minimum setback from the public street (except alleys), and (ii) all other property lines.~~ **ADJACENT TO A MAJOR ARTERIAL, PORTIONS OF BUILDINGS THAT ARE GREATER THAN 55 FEET IN HEIGHT MUST PROVIDE A MINIMUM 15-FOOT STEPBACK FOR A MINIMUM OF 50 PERCENT OF THAT PORTION OF THE BUILDING. PORTIONS OF THE BUILDING GREATER THAN 75 FEET IN HEIGHT MUST PROVIDE A MINIMUM 8-FOOT STEPBACK FOR A MINIMUM 50 PERCENT OF THAT PORTION OF THE BUILDING.**
6. If there is a conflict at the intersection of the stepback planes, the more gradual slope controls.

I. *Exceptions to building location, setback, prevailing setback and stepback standards.*

1. As outlined in Subsection 5.3006.I.2 through 5.3006.i.4 below, and except as provided in Subsection 5.3006.I.9. below, certain exceptions to building location, setback and stepback standards are allowed if the Development Review Board finds the exceptions conform to:
  - a. The Downtown Plan and Downtown Plan Urban Design & Architectural Guidelines; and
  - b. The sight distance requirements of the Design Standards and Policy Manual.
2. Subject to design approval by the Development Review Board, the following exceptions to building location, setback and stepback standards are allowed:
  - a. A maximum of five (5) feet for cornices, eaves, parapets and fireplaces.
  - b. A maximum of ~~seven (7)~~ **TWELVE (12)** feet for canopies and other covers over sidewalks, balconies and terraces.
  - c. Balcony walls and railings with a maximum inside height of forty-five (45) inches.
  - d. Uncovered balconies, uncovered terraces and patios at and below grade.
  - e. Covered sidewalks and uncovered terraces directly above a sidewalk.
3. Subject to design approval by the Development Review Board, in a Type 2 Area, a Type 2.5 Area, or a Type 3 Area, a maximum fifteen (15) feet exception to stepback and setback standards above the first floor (not specified in I.2. above), is allowed for projections that:
  - a. Are less than fifty (50) percent of the length of the segment of the building façade where the projections occur; and
  - b. Are less than thirty-three (33) percent of the surface area of the segment of the building façade where the projections occur.
4. Subject to design approval by the Development Review Board, an exception to the stepback standard is allowed for stairwells and elevator shafts.
5. The minimum setback from public streets (except alleys) shall be equal to the average prevailing setback of all buildings on the same frontage if forty (40) percent or more of



the existing buildings on the frontage are closer to the curb than the requirement of Table 5.3006.C.

6. The prevailing setback of a building with a building façade length of two hundred (200) feet or more shall be between five (5) feet and fifteen (15) feet greater than the average of the prevailing setbacks of all existing buildings on the same frontage, if forty (40) percent or more of the existing buildings on the frontage are nearer the curb than the requirement in Table 5.3006.F.
7. The minimum setback from public street (except alleys) shall be equal to the average prevailing setback of all buildings on the same frontage, but in a Type 2 Area, a Type 2.5 Area, or a Type 3 Area, not less than sixteen (16) feet.
8. The prevailing setback of a building with a building façade length of two hundred (200) feet or more shall be between five (5) feet and fifteen (15) feet greater than the minimum setback.
9. Exceptions to setback or stepback standards are not allowed:
  - a. To cross a property line; however, exceptions that encroach into the public street may be allowed, subject to the Scottsdale Revised Code.
  - b. On the side or rear, where the property line abuts a single-family residential district or an alley that abuts a single-family residential district shown on Table 4.100.A., or that portion of a Planned Community (P-C) with an underlying zoning district comparable to the single-family residential districts shown on Table 4.100.A., or any Planned Residential Development (PRD) District; however, a maximum five (5) feet exception to the stepback standard is allowed for stairwells, and elevator shafts, mechanical equipment and related screening, chimneys, parapets, and ridges of sloped roofs. This requirement does not apply to properties abutting the Arizona Canal.
  - c. To increase the building height maximum.
10. Where the building location requirements in Subsection 5.3006.F.1. above can not be met due to the location of the street line, the following shall apply:
  - a. In a Type 1 Area, at least fifty (50) percent of the:
    - i. Length of the building façade shall be located at the street line; and
    - ii. Area of the building façade at grade and up to a height of thirty (30) feet shall be located at the minimum setback.
  - b. In a Type 2 Area, a Type 2.5 Area, or a Type 3 Area, at least twenty-five (25) percent of the:
    - i. Length of the building façade shall be shall be located at the street line;
    - ii. Length of a building façade at grade and up to a height of thirty (30) feet shall be set back at least ten (10) additional feet; and
    - iii. Area of the building façade at grade and up to a height of thirty (30) feet shall be located at the minimum setback.

J. *Shaded sidewalks.*

1. The property owner shall provide shaded sidewalks that conform to the Downtown Plan Urban Design & Architectural Guidelines, subject to Development Review Board approval.

K. *Signs.*

1. The provisions of Article VIII. shall apply.

L. *Off-street parking.*

1. The provisions of Article IX. shall apply, except as provided below.
2. Vehicle parking is prohibited in the required setback specified in Table 5.3006.C.
3. The underground portion of a parking structure may be built to the property line.
4. A development with dwelling units that is required to provide:
  - a. Fifty (50) to two hundred (200) parking spaces for the dwelling units, shall provide at least ninety (90) percent of those parking spaces in a parking structure, podium parking, or tuck-under parking.
  - b. Two hundred one (201) or more parking spaces for the dwelling units, shall provide at least ninety (90) percent of those parking spaces in a parking structure, excluding podium parking and tuck-under parking.
5. The Development Review Board may approve an above-ground parking structure, podium parking and tuck-under parking adjacent to a public street if it finds that such parking conforms to the Downtown Plan and Downtown Plan Urban Design & Architectural Guidelines.

M. *Landscaping.*

1. The provisions of Article X. shall apply.



**EXHIBIT C**

**Legal Description for the Property**

**(attached hereto)**

Parcel No. 1:

That portion of the Southwest quarter of Section 23, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northwest corner of the Southwest quarter of the Northwest quarter of said Southwest quarter;

Thence South 89 degrees 32 minutes 34 seconds East (assumed bearing) along the North line of the Southwest quarter of the Northwest quarter of said Southwest quarter, 51.98 feet to a point on a curve, concave Northeasterly, whose radius point bears North 73 degrees 56 minutes 49 seconds East, 505.00 feet, said curve hereinafter referred to as "Curve Number 1", said point-on-curve being the point of beginning;

Thence continuing along said North line and along the North line of the South half of the East half of the Northwest quarter of the Southwest quarter of said Section 23, South 89 degrees 32 minutes 34 seconds East, 613.48 feet to a point of intersection with the Southerly prolongation of the West line of Tract B, Camelback Park Plaza, according to Book 86 of Maps, page 13, records of Maricopa County;

Thence North 00 degrees 06 minutes 23 seconds East, along said West line and Southerly prolongation, 147.12 feet to the Northwest corner of said Tract B;

Thence South 89 degrees 32 minutes 34 seconds East, along the North line of said Tract B, 73.13 feet (measured) (record 73.00 feet) to the Northeast corner thereof;

Thence South 00 degrees 07 minutes 46 seconds West (measured) (record South) along the East line of said Tract B and its Southerly prolongation, 147.12 feet to a point on the North line of the Southeast quarter of the Northwest quarter of said Southwest quarter;

Thence South 89 degrees 32 minutes 34 seconds East (measured) (record South 89 degrees 39 minutes 41 seconds East and South 89 degrees 38 minutes West) along last said North line, 206.91 feet to a point of intersection with the Northerly prolongation of the East line of Tract A, Winfield Scott Plaza Unit Four, according to Book 70 of Maps, page 28, records of Maricopa County;

Thence South 00 degrees 05 minutes 08 seconds West (measured) (record South 00 degrees 01 minute 43 seconds East) along said East line and Northerly prolongation, 165.85 feet;

Thence North 89 degrees 33 minutes 20 seconds West (measured) (record North 89 degrees 41 minutes 21 seconds West), 288.07 feet along the South line of said Tract A and its Westerly prolongation to a point on the East line of the Southwest quarter of the Northwest quarter of said Southwest quarter, said point being the Southeast corner of the North half of the North half of said Southwest quarter of the Northwest quarter of the Southwest quarter, and said point also being the Northeast corner of Winfield Scott Plaza Unit Three, according to Book 70 of Maps, page 49, Maricopa County Records;



Thence South 00 degrees 07 minutes 05 seconds West (measured) (record South 0 degrees 01 minute 30 seconds East) along last said East line, 105.92 feet;

Thence North 89 degrees 32 minutes 38 seconds West, 48.33 feet to a point of curvature of a curve, concave Southeasterly, having a radius of 205.00 feet;

Thence Southwesterly, along the arc of said curve, through a central angle of 48 degrees 49 minutes 13 seconds, 174.68 feet to a point on the North line of Lot 111 of said Winfield Scott Plaza Unit Three, which point lies North 89 degrees 33 minutes 43 seconds West (measured) (record North 89 degrees 41 minutes 21 seconds West) 33.58 feet from the Northeast corner thereof;

Thence continuing along last said curve, through a central angle of 06 degrees 46 minutes 17 seconds, 24.23 feet to a point of tangency;

Thence South 34 degrees 51 minutes 52 seconds West, 17.33 feet to a point of curvature of a curve, concave Northerly, having a radius of 25.00 feet;

Thence Westerly, along the arc of said curve through a central angle of 90 degrees 00 minutes 00 seconds, 39.27 feet to a point of tangency;

Thence North 55 degrees 08 minutes 08 seconds West, 70.60 feet to a point on the North line of Lot 110 of said Winfield Scott Plaza Unit Three, which point lies South 89 degrees 33 minutes 43 seconds East (measured) (record South 89 degrees 41 minutes 21 seconds East) 24.85 feet from the Northwest corner thereof;

Thence continuing along last said tangent line, 34.93 feet;

Thence North 34 degrees 51 minutes 52 seconds East, 7.00 feet;

Thence North 55 degrees 08 minutes 08 seconds West, 76.53 feet to a point of curvature of a curve, concave Northeasterly, being said "Curve Number 1", whose radius point bears North 34 degrees 51 minutes 52 seconds East, 505.00 feet;

Thence Northwesterly, along the arc of said curve, through a central angle of 39 degrees 04 minutes 57 seconds, 344.47 feet to the point of beginning.

Parcel No. 2:

That portion of the Southwest quarter of Section 23, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northwest corner of the Southwest quarter of the Northwest quarter of said Southwest quarter;

Thence South 00 degrees 07 minutes 06 seconds West (assumed bearing) (record South) along the monument line of Scottsdale Road, 536.00 feet (measured) (record 535.82 feet)

to the Northwest corner of Winfield Scott Plaza unit Two, according to Book 67 of Maps, page 41, records of Maricopa County;

Thence South 89 degrees 33 minutes 19 seconds East, along the North line of said Winfield Scott Plaza Unit Two, which North line is also the South line of Winfield Scott Plaza Unit Three, according to Book 70 of Maps, page 49, Maricopa County Records, 56.00 feet to a point on the Easterly right-of-way line of Scottsdale Road, said point being the point of beginning;

Thence North 00 degrees 07 minutes 06 seconds East, along said Easterly right-of-way line of Scottsdale Road, 40.00 feet to the Southwest corner of Lot 96 of said Winfield Scott Plaza Unit Three;

Thence South 89 degrees 33 minutes 19 seconds East (measured) (record South 89 degrees 42 minutes 10 seconds East) along the South line of said Lot 96, its Easterly prolongation, and along the South line of Lot 105 of said Winfield Scott Plaza Unit Three, 123.40 feet to a point on last said South line which lies North 89 degrees 33 minutes 19 seconds West (measured)(record North 89 degrees 42 minutes 10 seconds West) 52.64 feet from the Southeast corner of said Lot 105;

Thence North 00 degrees 28 minutes 09 seconds East, 36.34 feet;

Thence South 89 degrees 31 minutes 51 seconds East, 22.02 feet;

Thence North 00 degrees 26 minutes 41 seconds East, 25.57 feet;

Thence South 89 degrees 33 minutes 00 seconds East, along the North line of Lot 104 of said Winfield Scott Plaza Unit Three and its Easterly prolongation, 70.21 feet to the Monument Line of Winfield Scott Plaza Street as shown on the plat of said Winfield Scott Plaza Unit Three;

Thence North 00 degrees 04 minutes 50 seconds East (measured) (record North) along said Monument Line, 19.87 feet;

Thence South 55 degrees 08 minutes 08 seconds East, 48.70 feet to a point on the West line of Lot 107 of said Winfield Scott Plaza Unit Three, from which point the Southwest corner of Lot 106 of said Winfield Scott Plaza Unit Three lies South 00 degrees 04 minutes 50 seconds West (assumed bearing), 54.21 feet;

Thence continuing South 55 degrees 08 minutes 08 seconds East, 34.17 feet to the point of curvature of a curve, concave Westerly, having a radius of 25.00 feet;

Thence Southerly, along the arc of said curve, through a central angle of 90 degrees 00 minutes 00 seconds, 39.27 feet to the point of tangency;

Thence South 34 degrees 51 minutes 52 seconds West, 0.15 feet to a point on the South line of said Lot 106, from which point the Southeast corner of Lot 115 of said Winfield Scott Plaza Unit Three lies South 89 degrees 35 minutes 15 seconds East, 141.77 feet;



Thence continuing South 34 degrees 51 minutes 52 seconds West, 182.88 feet to the point of curvature of a curve, concave Northwesterly, having a radius of 145.00 feet;

Thence Southwesterly, along the arc of said curve, through a central angle of 6 degrees 25 minutes 05 seconds, 16.24 feet to a point on the East line of Lot 84 of said Winfield Scott Plaza Unit Two;

Thence continuing along the arc of said curve, through a central angle of 40 degrees 15 minutes 45 seconds, 101.89 feet to a point on the Easterly prolongation of the South line of Lot 90 of said Winfield Scott Plaza Unit Two, which lies South 89 degrees 33 minutes 28 seconds East (measured) (record South 89 degrees 42 minutes 57 seconds East) 88.53 feet from the Southwest corner of said Lot 90;

Thence continuing along the arc of said curve, through a central angle of 08 degrees 14 minutes 12 seconds, 20.85 feet to the point of tangency;

Thence South 89 degrees 46 minutes 55 seconds West, 67.76 feet to a point on the Easterly right-of-way line of Scottsdale Road, which point is on the West line of Lot 91 of said Winfield Scott Plaza Unit Two, and which point lies South 00 degrees 07 minutes 06 seconds West (measured) (record South), 2.52 feet from said Southwest corner of said Lot 90;

Thence North 00 degrees 07 minutes 06 seconds East, along said Easterly right-of-way line, 174.64 feet to the point of beginning.

Parcel No. 3:

That part of the following described parcel designated and referred to as the "Subsurface Parcel" in that certain License Agreement recorded in Document No. 1989-407772, records of Maricopa County, Arizona:

That portion of the Southwest quarter of Section 23, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the intersection of the monument lines of Paradise Paseo (also known as 6th Avenue) and Winfield Scott Plaza as shown on the plat of Winfield Scott Plaza Unit Three recorded in Book 70 of Maps, page 49, Maricopa County Records;

Thence South 89 degrees 35 minutes 15 seconds East (assumed bearing) along the monument line of said Paradise Paseo, 82.96 feet;

Thence North 34 degrees 51 minutes 52 seconds East, 101.08 feet;

Thence North 55 degrees 08 minutes 08 seconds West, 50.00 feet to the point of beginning;

Thence South 34 degrees 51 minutes 52 seconds West, 48.51 feet to a point of non-tangent curvature of a curve, concave Southwesterly, whose radius point bears South 46 degrees 24 minutes 05 seconds West, 25.00 feet;

Thence Northwesterly, along the arc of said curve, through a central angle of 11 degrees 32 minutes 13 seconds, 5.03 feet to a point of tangency;

Thence North 55 degrees 08 minutes 08 seconds West, 182.07 feet;

Thence South 34 degrees 51 minutes 52 seconds West, 2.00 feet to a point of non-tangency curvature of a curve, concave Northeasterly, whose radius point bears North 34 degrees 51 minutes 52 seconds East, 610.00 feet, said curve hereinafter referred to as "Curve Number 1";

Thence Northwesterly, along the arc of said curve, through a central angle of 8 degrees 11 minutes 06 seconds, 87.14 feet;

Thence leaving the arc of said curve, on a radial bearing of North 43 degrees 02 minutes 58 seconds East, 100.00 feet to a point of non-tangent curvature of a curve, concave Northeasterly, concentric with said Curve Number 1, whose radius point bears North 43 degrees 02 minutes 58 seconds East, 510.00 feet;

Thence Southeasterly, along the arc of said curve, through a central angle of 08 degrees 11 minutes 06 seconds, 87.14 feet;

Thence leaving the arc of said curve, on a radial line of South 34 degrees 51 minutes 52 seconds West, 2.00 feet;

Thence South 55 degrees 08 minutes 08 seconds East, 182.07 feet to a point of curvature of a curve, concave Northeasterly, having a radius of 25.00 feet;

Thence Southeasterly, along the arc of said curve, through a central angle of 11 degrees 32 minutes 13 seconds, 5.03 feet;

Thence leaving the arc of said curve, on a non-tangential line South 34 degrees 51 minutes 52 seconds West, 48.51 feet to the point of beginning.

Parcel No. 4:

That part of the following described parcel designated and referred to as the "Air Parcel" in that certain License Agreement recorded in Document No. 1989-407772, records of Maricopa County, Arizona:

That portion of the Southwest quarter of Section 23, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:



Commencing at the intersection of the monument lines of Paradise Paseo (also known as 6th Avenue) and Winfield Scott Plaza as shown on the plat of Winfield Scott Plaza Unit Three as recorded in Book 70 of Maps, page 49, Maricopa County Records;

Thence South 89 degrees 35 minutes 15 seconds East (assumed bearing) along the monument line of said Paradise Paseo, 82.96 feet;

Thence North 34 degrees 51 minutes 52 seconds East, 101.08 feet;

Thence North 55 degrees 08 minutes 08 seconds West, 36.00 feet to the point of beginning;

Thence South 34 degrees 51 minutes 52 seconds West, 60.00 feet;

Thence North 55 degrees 08 minutes 08 seconds West, 80.00 feet;

Thence North 34 degrees 51 minutes 52 seconds East, 120.00 feet;

Thence South 55 degrees 08 minutes 08 seconds East, 80.00 feet;

Thence South 34 degrees 51 minutes 52 seconds West, 60.00 feet to the point of beginning;

Except that part lying within the hereinabove described Parcel Numbers 1 and 2.

Parcel No. 5:

A non-exclusive easement for ingress and egress and utilities as set forth in that certain "Easement Agreement" recorded July 5, 2000, in Document No. 2000-0513273, Official Records of Maricopa County, Arizona, over the following described property:

That parcel of land situated in a portion of the Northwest quarter of the Northwest quarter of the Southwest quarter of Section 23, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northwest corner of Lot 8, Shoeman Tract, according to Book 42 of Maps, page 31, records of Maricopa County, Arizona;

Thence South 00 degrees 09 minutes 00 seconds West, along the West line of said Lot 8, 15.00 feet to a point on the South right-of-way line of Shoeman Lane;

Thence South 89 degrees 37 minutes 13 seconds East, along said right-of-way line, 13.87 feet to the point of beginning;

Thence continuing South 89 degrees 37 minutes 13 seconds East, along said right-of-way line, 16.69 feet;

Thence South 00 degrees 40 minutes 45 seconds West, 98.97 feet;

Thence South 44 degrees 15 minutes 45 seconds East, 11.56 feet;

Thence South 00 degrees 31 minutes 17 seconds West, 29.13 feet to a point on the South line of said Lot 8, Shoeman Tract;

Thence North 89 degrees 32 minutes 34 seconds West, along said South line, 37.56 feet to the Southwest corner of said Lot 8;

Thence North 00 degrees 09 minutes 00 seconds East, along the West line of said Lot 8, 2.18 feet;

Thence North 55 degrees 33 minutes 30 seconds East, 9.83 feet to the beginning of a tangent curve, concave Northwesterly and having a radius of 10.00 feet;

Thence Northeasterly, along the arc of said curve to the left, through a central angle of 54 degrees 43 minutes 04 seconds, an arc distance of 9.55 feet;

Thence North 00 degrees 50 minutes 06 seconds East, 120.36 feet to a point on the South right-of-way line of said Shoeman Lane and the point of beginning.

Parcel No. 6:

A non-exclusive easement for ingress and egress and utilities as set forth in that certain "Easement Agreement" recorded July 5, 2000, in Document No. 2000-0513273, Official Records of Maricopa County, Arizona, over the following described property:

That parcel of land situated in a portion of the Northwest quarter of the Southwest quarter of Section 23, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Southeast corner of Lot 10, Shoeman Tract, according to Book 42 of Maps, page 31, Maricopa County Records, and the point of beginning;

Thence North 89 degrees 32 minutes 34 seconds West, along the South line of said Lot 10, 42.94 feet;

Thence North 64 degrees 27 minutes 09 seconds East, 2.12 feet to the beginning of a tangent curve, concave Northwesterly and having a radius of 16.92 feet;

Thence Northeasterly, along the arc of said curve to the left, through a central angle of 64 degrees 36 minutes 24 seconds, an arc distance of 19.08 feet to the beginning of a reverse curve, concave Easterly and having a radius of 59.50 feet;

Thence Northeasterly, along the arc of said curve to the right, through a central angle of 37 degrees 25 minutes 44 seconds, an arc distance of 38.87 feet;



Thence North 37 degrees 16 minutes 29 seconds East, 32.03 feet to a point on the East line of said Lot 10 and the West line of Camelback Park Plaza, according to Book 86 of Maps, page 13, Maricopa County Records;

Thence continuing North 37 degrees 16 minutes 29 seconds East, 13.24 feet to a point on the West line of Tract "B" of said Camelback Park Plaza;

Thence South 00 degrees 06 minutes 23 seconds West, along the Southerly prolongation of the West line of said Tract "B", 88.85 feet to a point on the South line of said Camelback Park Plaza;

Thence North 89 degrees 32 minutes 34 seconds West, along said South line, 8.00 feet to the Southeast corner of said Lot 10 and the point of beginning;

EXCEPT the East 8.00 feet as measured along the South line thereof.

Parcel No. 6A:

A non-exclusive easement for ingress and egress and utilities as set forth in that certain "Easement Agreement" recorded March \_\_, 2006, in Document No. 2006-\_\_\_\_\_, Official Records of Maricopa County, Arizona, over the following described property:

That parcel of land situated in a portion of the Northwest quarter of the Southwest quarter of Section 23, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

The East 37 feet of Lot 10, as measured along the South line thereof, of Shoeman Tract, according to Book 42 of Maps, page 31, records of Maricopa County, Arizona.

**When Recorded Return to:**

City of Scottsdale  
Current Planning Services  
7447 E. Indian School Rd., Suite 105  
Scottsdale, AZ 85251

Agreement No. 201619-021-COS

**DEVELOPMENT AGREEMENT**

This Development Agreement (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201619, by Stockdale Galleria Land Owner, LLC, a Delaware limited liability company ("Developer"), and the City of Scottsdale, Arizona, an Arizona municipal corporation ("City"), collectively referred to as "the Parties".

**RECITALS**

A. Arizona Revised Statutes §9-500.05 authorizes the City to enter into a Development Agreement related to real property located inside the incorporated area of the City with a landowner or other person having an interest in the real property.

B. The Property that is the subject of this Agreement consists of approximately 1.979 net acres located at 4419 North Scottsdale Road, 7223 East Shoeman Lane, 7233 East Shoeman Lane, and 7235 East Shoeman Lane, Scottsdale, Arizona (the "Property"). The Property is situated within the incorporated boundaries of the City and is more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference.

C. The Developer is the owner of the Property described in **Exhibit A**.

D. Developer plans to develop the Property by constructing a 271,900~~204,660~~ +/- square foot commercial building and parking structure ("the Project").

E. Developer desires to utilize available bonus provisions under the Scottsdale Revised City Code, to increase the gross floor area of the Project by 95,018.846~~789~~ square feet and obtain an additional 7230 feet of Building Height by constructing the development in accordance with the City of Scottsdale's ~~Green Building Program and~~ code, constructing certain Special Improvements in the East Shoeman Lane right-of-way, and paying to the City ~~Two Hundred Sixty Eight Thousand Seven Hundred Ninety Five Dollars and forty three cents (\$268,795.43)~~ Two Million Fifty-Four Thousand Three



Hundred Thirty-One Dollars and twenty-four cents (\$2,054,331.24) to be deposited into the City's Downtown Special Improvement Trust Fund to be used by the City for the future construction of Special Improvements that achieve public benefits in the Downtown Area specifically within boundaries of the area depicted by the bold outline on **Exhibit "B"** (the "Future Special and Parking Improvement Area") attached hereto and incorporated herein by reference.

F. In order to complete the Project, the Developer has made Development Applications to the City for a ~~Zoning Ordinance Text Amendment, case number 5-TA-2015; and, a~~ Zoning District Map Amendment, case number 7-ZN-2015#2.

G. The Parties understand that following the conclusion of the required public hearings the Scottsdale City Council may vote to deny or approve the Developer's Development Application requests for the ~~Zoning Ordinance Text Amendment and~~ Zoning District Map Amendment. This Agreement does not require the City Council to vote in any particular way.

H. The Developer will commission and install original artwork on the Property in accordance with the Scottsdale Revised Code.

I. Developer and City acknowledge and agree that development of the Property will benefit the City's residents and the Property.

J. This Agreement is consistent with the portions of the City's General Plan applicable to the Property on the date of this Agreement.

K. The City's governing body has authorized execution of this Agreement by Resolution No. ~~10357~~.

## AGREEMENT

**NOW, THEREFORE,** in consideration of the foregoing Recitals and representations and the mutual covenants and conditions in this Agreement, The Parties agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated into this Agreement by this reference.

2. Effective date. This agreement shall be effective upon execution by the parties.

3. Property Interest of the Developer. Developer warrants that it is the fee title owner of the Property and that the Property is located within the municipal limits of the City.



4. Developers Bonus and Special Improvement Obligations.

4.1 Bonus Development Standards. The Property is zoned ~~Downtown/Downtown Multiple Use Type-3, Planned Block Development, Downtown Overlay (D/DMU-2, PBD, DO) zoning which includes a Development Plan and Bonus Development Standards~~Central Business Downtown Overlay (C-2 DO) and Highway Commercial Downtown Overlay (C-3 DO). Developer will apply for an amendment to the existing Development Plan and Zoning District Map Amendment to rezone the Property to Downtown/Downtown Multiple Use Type-2, Planned Block Development, Downtown Overlay (D/DMU-2, PBD, DO) zoning that includes existing Bonus Development Standards.

4.2 Bonus Provisions. Developer shall be entitled to utilize available bonus provisions under Scottsdale Revised City Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplemental Districts, Section 6.1310 to obtain an increase in gross floor area and obtain additional building height inclusive of roof top appurtenances not to exceed the amount approved in Zoning District Map Amendment, case number 7-ZN-2015#2, for the Project, if Developer:

~~4.2.1 Constructs the entire Project in accordance with the City of Scottsdale's Green Building Program and code, which is the International Green Construction Code (IGCC), as amended and adopted by the City of Scottsdale;~~

4.2.24.2.1 Constructs those certain Special Improvements in the East Shoeman Lane right-of-way, described on **Exhibit "C"** (the "East Shoeman Lane Street Improvements"), pursuant to Section 4.3 below; and

4.2.34.2.2 Pays Two Million Fifty-Four Thousand Three Hundred Thirty-One Dollars and twenty-four cents (\$2,054,331.24) ~~Two Hundred Sixty-Eight Thousand Seven Hundred Ninety-Five Dollars and forty-three cents (\$268,795.43)~~ into the City's Downtown Special Improvement Trust Fund (the "In-Lieu Payment for Special Improvements").

4.3 Additional Terms Related to the Special Improvements in the East Shoeman Lane right-of-way.

4.3.1 Developer shall pay for any and all costs and expenses of designing, engineering, permitting, constructing and installing the East Shoeman Lane Street Improvements; such costs and expenses (which shall include, without limitation, costs of labor and materials and professional and consultant fees) shall be a minimum of Four Hundred Sixteen Thousand Two Hundred Seventy Dollars and twenty-five cents (\$416,270.25).



4.3.2 The Developer shall maintain the sidewalks, hardscape, landscape, bicycle racks, pedestrian amenities, and pedestrian lighting improvements constructed in the East Shoeman Lane right-of-way as a condition of obtaining the Special Improvement bonus. The City shall own the East Shoeman Lane Street Improvements after the City has accepted them as complete and final.

4.4 Developer's Additional Terms Related to the In-lieu Payment for Special Improvements.

4.4.1 Prior to the issuance of any permit to construct any vertical improvements, above or below grade, excluding excavation, the Developer shall pay to the City the In-Lieu Payment for Special Improvements. However, the last day the payment can be made without an increase is December 31, ~~2017~~2020, and any unpaid amount after December 31, ~~2017~~2020 is subject to being increased as set forth in Section 4.4.2.

4.4.2 If all or any part of the In-Lieu Payment for Special Improvements has not been paid by December 31, ~~2017~~2020, any unpaid amount shall increase on January 1, ~~2018~~2020, and annually thereafter, by an escalator factor of 3.5% in accordance with the following formula:

$$A = P(1 + 0.035)^{CY-2019(2)17}$$

Where:

A = Dollar amount to be paid

P= Unpaid amount of In-Lieu Payment for Special Improvements

CY = Current year

4.5 City's Additional Terms Related to the use of In-Lieu Payment for Special Improvements.

4.5.1 The City shall deposit the In-Lieu Payment for Special Improvements into the City's Downtown Special Improvement Trust Fund.

4.5.2 The City shall use the In-Lieu Payment for Special Improvements to construct future Special Improvements that serve as a public benefit within the Future Special and Parking Improvement Area.

4.5.3 The City agrees to own and maintain the Special Improvements constructed by the City with the In-Lieu Payment for Special Improvements.

4.6 Failure to Pay. All amounts set forth in paragraphs 4.2.~~23~~ and 4.4.1 of this Agreement shall be paid no later than 12:00 noon on December 31, ~~2018~~2020. If Developer has not made full payment of all amounts, the City shall issue a written notice by regular U.S. Mail to Developer containing a calculation of all outstanding amounts due,



including any increases as a result of escalation. Developer shall pay in full the outstanding amounts to the City by cashier check no later than thirty (30) days from the date of the letter. If payment has not been received by the City in accordance with the demand for payment set forth in the letter, the City will suspend all certificates of occupancy issued for the Project and all operations on the Property shall cease until full payment has been made and the certificates have been reissued.

5. Developer's Removal of Public Parking.

5.1 Payment Amount for the Removal of Public Parking. As part of the development of the Project, Developer may remove and not replace up to eighteen (18) existing public parking spaces in the East Shoeman Lane right-of-way adjacent to the Property (each, a "Removed Space"). Developer shall (i) pay the City twelve thousand nine hundred fifty-eight dollars and thirteen cents (\$12,958.13) per Removed Space as compensation for the City's loss of that public parking space.

5.2 Payment Due. Prior to the issuance to Developer of any permit to construct any improvements that would cause the elimination of any existing public parking spaces in the East Shoeman Lane right-of-way, Developer shall pay to the City the amount specified in Section 5.1. Any payment incurred pursuant to Section 5.1, and payable after January 1, ~~2018,2020~~, shall increase in accordance with the fee schedule for in-lieu parking credits, Resolution No. 8153, beginning on January 1, ~~2018~~2020, and the first day of each year thereafter, until paid.

5.3 Parking Improvement Account. The City agrees to deposit the amount paid by the Developer set forth in paragraph 5.1 into a new City account titled the "Downtown Drinkwater Neighborhood Parking Structure Improvements" (the "DDNPSI").

5.4 City's Use of Funds. The City agrees to use the funds deposited into the DDNPSI account to develop a future parking structure within the area as depicted by the bold outline shown on **Exhibit "B"** incorporated herein the "Future Special and Parking Improvement Area".

5.5 Parking Credits. The Developer and the City agree that the Developer will not receive, and the Property will not be assigned, parking space credits for any amount paid by Developer for the removal of public parking spaces in the East Shoeman Lane right-of-way.

6. Supplemental Parking Plan.

6.1 Requirement to provide a Supplemental Parking Plan. If more than ninety-seven percent (97%) of the Office Space Parking is occupied for more than six (6) consecutive hours during three (3) Work Days in a one-month period (sometimes herein called "Full Capacity") (as measured in a Parking Occupancy Assessment, defined below



in section 6.2.1, on the terms and conditions of this Section 6), upon written request from the City Manager, the Developer shall provide a supplemental parking plan to the City Manager within fifteen (15) days of the request for approval. For purposes of this Section 6, (a) "occupied" is defined as a parking space that has a vehicle in it, or is physically obstructed in a manner that prevents a vehicle from being parked in it, or is reserved and is vacant at the time of the parking count, (b) "Work Days" is defined as any day Monday through Friday, the hours from 8:00 A.M. to 5:00 P.M., and, (c) a measurement of Office Space Parking shall be referred to as a "Parking Occupancy Assessment."

## 6.2 Parking Occupancy Assessments.

6.2.1 The City's rights to conduct Parking Occupancy Assessments shall commence when seventy-five percent (75%) of the total gross leasable area of the Project has been issued a Certificate-of-Occupancy. The City Manager shall notify the Developer in writing when Parking Occupancy Assessments are necessary to be conducted. A Parking Occupancy Assessment shall consist of the initial count of parking spaces and a verification recount within five days of the initial count. The verification recount shall be conducted by the City without additional notice to the Developer.

6.2.2 The Developer shall have the discretion of choosing the method of conducting each Parking Occupancy Assessment between (i) the City, or (ii) by a third party Traffic Engineer registered in the State of Arizona. In the written notice to the Developer in accordance with 6.2.1, the City Manager shall provide a minimum of three (3) third party Traffic Engineers that the developer may approve from to conduct the third party Parking Occupancy Assessments. Within seven (7) days of a written notice in accordance with 6.2.1, the Developer shall respond in writing indicating the chosen method to conduct the Parking Occupancy Assessment, and when applicable, the Developer's choice of the third party Traffic Engineer from the list provide by the City Manager. The Developer shall not withhold its approval of one of the third party Traffic Engineers provided by the City. Within thirty (30) days of the City's delivery to Developer, of a written notice with invoices substantiating charges by the elected Traffic Engineer for a Parking Occupancy Assessments, the Developer shall reimburse the City for all reasonable, out-of-pocket, third-party costs of conducting the Parking Occupancy Assessment.

6.2.3 Upon the City Manager providing the Developer a minimum two (2) Work Days written notice, the Developer shall grant the party conducting the Parking Occupancy Assessment and his/her employee(s) reasonable access to all parking facilities within the Project that include Office Space Parking.

6.2.4 The City Manager shall select the Work Days that the assessment is to be conducted the ("Assessment Days"); provided, however, that the Assessment days may not be consecutive and must be three (3) different days of the week.



6.2.5 If the Parking Occupancy Assessment results give the City the right to request a Supplemental Parking Plan pursuant to Section 6.1, the City shall deliver written notice to Developer permitting Developer thirty (30) days to cure the parking condition prior to the City delivering written notice demanding a Supplemental Parking Plan. On or before the expiration of such thirty (30) day cure period, Developer may request that the City perform another Parking Occupancy Assessment; after which, if the newly performed Parking Occupancy Assessment results in a finding of continued Full Capacity, the City may deliver to Developer written request for a Supplemental Parking Plan.

6.2.6 The City shall not perform more than three (3) Parking Occupancy Assessments in any twelve (12) month period; provided that Parking Occupancy Assessments requested by Developer shall not count toward such maximum.

6.3 Supplemental Parking Plan. The supplemental parking plan shall require the Developer, in its discretion, to either:

6.3.1 secure additional parking spaces for the Project by leasing parking spaces from a public or quasi-public parking facility within nine hundred feet of the Project. If a public or quasi-public parking facility is not available at the time that supplemental parking is required, the City Manager shall allow the Developer to secure additional parking spaces from another property within two thousand six hundred forty (2,640) feet of the Property which shall be through a lease agreement with the property owner of the property that has parking available which is not otherwise required by and accounted for pursuant to the City of Scottsdale's Zoning Ordinance. The additional parking spaces under the supplemental parking plan that are leased by the Developer shall be an amount that decreases the occupied Office Space Parking to less than Full Capacity. If a public or quasi-public parking facility becomes available after the time that supplemental parking is required, any private parking leases in effect at that time shall not be renewed, and subsequent leases if necessary, shall be from the public or quasi-public facility; or

6.3.2 deliver to the City for its review and approval (consent not to be unreasonably withheld), and agree to execute, a parking management plan to reduce parking in the parking structure to less than Full Capacity; the parking management plan may incorporate concepts including, but not limited to (a) free or subsidized employee bus passes, (b) carpool and van pool programs, and/or (c) alternative transit incentives.

6.3.3 After a Supplemental Parking Plan has been agreed upon by City and Developer, Developer may at any time, and from time to time, request that the City perform another Parking Occupancy Assessment. If the re-assessment results find that parking is less than Full Capacity, the Developer may terminate any parking Lease.

6.4 Cost of providing and implementing the Supplemental Parking Plan. Developer shall pay all costs associated with providing and implementing the



Supplemental Parking Plan; provided that, notwithstanding the foregoing, and upon verification by the City Manager, the Developer shall have no obligation to lease parking if the fees, rent and other charges for such spaces exceed fair market rate. If the City Manager verifies, in its reasonable discretion, that the lease parking spaces in the public or quasi-public parking facility exceed fair market rate, the Developer may lease available private parking in accordance with Section 6.2.

6.5 Modifications to the Supplemental Parking Plan. The City Manager may approve modifications to the Supplemental Parking Plan provided that the modifications are designed to keep the parking structure under Full Capacity.

6.6 Term of Supplemental Parking Plan Requirement and Other Terms of Section 6. Notwithstanding anything to the contrary herein (or in any Supplemental Parking Plan), Developer's obligations and the City's rights in this Section 6 (and any Supplemental Parking Plan) shall automatically expire, without need for any further notice, on the earlier of: (a) four (4) years after the date of the first Certificate of Occupancy is issued at the Property for the Office Area (defined below), (b) on the date that a Certificate-of-Occupancy is issued for a parking structure constructed on the City-owned property at or near East Stetson Drive, and in between North Wells Fargo Avenue and North Civic Center Boulevard, with the Maricopa County Assessor's Parcel Numbers of 173-41-115 and 173-41-116A, or (c) Developer constructs a fourth level of parking (which may be underground).

## 7. Artwork.

7.1 Artwork Requirement. Developer shall commission and install an original artwork on the Property in accordance with Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplementary Districts, Section 6.1309. – Cultural Improvements Program requirements. And Article VII, - General Provisions, Section 7.1000. – Cultural Improvements Program, through Section 7.1017.

7.2 Artwork Cost Requirement. The minimum cost of the artwork shall be calculated in accordance with Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplementary Districts, Section 6.1309. – Cultural Improvements Program requirements. And Article VII, - General Provisions, Section 7.1004. – General Provisions.

### 7.3 Conceptual Art Plan Approval.

7.3.1 The Developer and the City agree that the Developer may defer approval of the Conceptual Art Plan from the Cultural Council and Development Review Board in accordance with the Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance, Article VII, - General Provisions, Section 7.1014. – Deferment of artwork of the Cultural Improvements Program.



7.3.2 The Developer agrees that the approval of the Conceptual Art Plan from the Cultural Council and from the Development Review Board shall be obtained prior to the issuance of any building permit to construct any vertical improvements, above or below grade, excluding excavation, on the Property.

7.4 Artwork Installation and Certificate of Completion.

7.4.1 City and the Developer agree that the Developer may obtain a Temporary Certificate-of-Occupancy, as determined by the City's Building Official, for the parking garage that is connected to the Project prior to the Certificate of Completion for the artwork so that the garage may be utilized during construction of the Project by the Developer's construction contractor and employees that are associated with construction of the Project.

7.4.2 The Developer agrees that the City may revoke any Temporary Certificate-of-Occupancy issued by the City's Building Official for the parking garage that is connected to the Project if the Developer fails to install the artwork prior to obtaining a final site inspection for the Project.

7.4.3 Exclusive of paragraph 7.4.1, Developer agrees to obtain a Certificate of Completion from the Zoning Administrator for the installation of the Artwork prior to the issuance of a Temporary Certificate-of-Occupancy, Final Site Inspection, Certification of Shell Building or Certificate-of-Occupancy for the Project.

7.5 Ownership and Maintenance of Artwork. The current Property owner(s) and its successors and assigns shall own and maintain the Artwork in accordance with the Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance.

8. Project Parking Space Distribution. Developer shall provide a minimum of nine hundred ~~six seventy~~ (90670) parking spaces (the "Total Parking Spaces") at the Property. ~~Eight hundred thirty-eight~~ ~~Nine hundred twenty~~ (838920) parking spaces (the "Office Space Parking") of the Total Parking Spaces provided shall be provided for the office area (the "Office Area") (approximately ~~250,900~~ ~~191,023~~ square feet) of the Project, and ~~fiftysixty-eight~~ (6850) parking spaces ("Retail Parking Spaces") of the Total Parking Spaces shall be provided for the retail area (approximately ~~20,000~~ ~~13,637~~ square feet) of the Project.

a. Retail Parking Spaces. The Retail Parking Spaces:

- a) Shall be located on the grade level of the parking garage, and only those Retail Parking Spaces that do not fit on grade level of parking garage may be located on 1st level above grade and on vehicle ramp from the grade level 1st level above grade of the parking garage;



- b) shall be nearest to the East Shoeman Lane vehicle entrance/exit;
- c) shall not be restricted by gate access or other restrictive measure, except for the maximum amount of time that a vehicle may occupy the parking space;
- d) shall not, for the purpose of counting Retail Parking Spaces, include more than 2 accessible parking spaces; and
- e) shall include, for each Removed Space, one Retail Parking Space that has a maximum 3-hour time parking limit.

b. Modification to the Distribution of Parking Spaces. The City Manager or designee may approve alternative distribution of the parking spaces for the retail and office areas, provided that a minimum of one (1) parking space is provided for each two hundred fifty (250) square feet of retail gross floor area.

9. Compliance with all Laws. Developer shall develop the Property in compliance with all Federal, State, County and local laws, ordinances, rules, regulations, permit requirements, or any other policies of the City.

10. General Provisions.

10.1 Notices. All notices, filings, consents, approvals, and other communications provided for herein or given in connection herewith ("notices") shall be validly given, filed, made, delivered, or served if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City:                      The City of Scottsdale  
    Attention: City Attorney  
    3939 North Drinkwater Boulevard  
    Scottsdale, Arizona 85251

Copy to:                                City of Scottsdale  
    Attention: Zoning Administrator  
    Planning and Development Services  
    Department  
    7447 E. Indian School Rd., Suite 105  
    Scottsdale, AZ 85251

City of Scottsdale  
 Attention: City Manager  
 3939 North Drinkwater Boulevard

Scottsdale, AZ 85251

If to Developer: Stockdale Galleria Land Owner, LLC  
Attention: Shahrod Yari  
4343 N. Scottsdale Rd., Suite 180  
Scottsdale, AZ 85251

Copy to: Withey Morris, PLC  
Attention: Jason Morris  
2525 East Arizona Biltmore Circle, Suite A-212  
Phoenix, AZ 85016

10.2 Mailing Effective. Notices given by registered or certified mail shall be deemed delivered 72 hours following deposit in the U.S. Postal Service in the manner set forth above.

10.3 Approvals. When a party's consent is required pursuant to this agreement, the consenting party shall not unreasonably withhold, delay or condition its approval.

10.4 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement

10.5 Headings. The descriptive headings of the paragraphs of the Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

10.6 Authority. The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement.

10.7 Entire Agreement. The Agreement, including exhibits, constitutes the entire Agreement between the parties.

10.8 Severability. If any provision of this Agreement limiting the uses of the Property is declared void or unenforceable, then the entire Agreement shall be void. If any other provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the fundamental purposes of this Agreement are not defeated by such severability.

10.9 Governing Law. The laws of the State of Arizona shall govern the



interpretation and enforcement of this Agreement. The Parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Maricopa County, Arizona, and the Parties hereby waive any right to object to such venue.

10.10 Recordation. This Agreement, and any amendment or cancellation of this Agreement, shall be recorded, in its entirety, in the official records the county recorder's office in Maricopa County, Arizona, no later than ten (10) days after the effective date of this Agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

10.11 Remedies. If any party to this Agreement breaches any provision of the Agreement, the non-defaulting party shall be entitled to all remedies available at both law and in equity, including specific performance.

10.12 Attorneys' Fees and Costs. If any party brings a legal action either because of a breach of the Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.

10.13 Binding Effect. The benefits and burdens of this Agreement shall run with the Property and be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest, and assigns. This Agreement shall be incorporated by reference in any instrument purporting to convey an interest in the Property.

10.14 Third Parties. There are no third party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

10.15 No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

10.16 Contract Administrator. The City's contract administrator for this Agreement shall be City Manager, for the City of Scottsdale, or designee.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

THE CITY OF SCOTTSDALE:  
an Arizona municipal corporation

ATTEST:

By: \_\_\_\_\_  
Carolyn Jagger, City Clerk

By: \_\_\_\_\_  
W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Joe Padilla, Deputy City Attorney

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, ~~2016~~2019, by W. J. "Jim" Lane, Mayor of the City of Scottsdale, Arizona, a municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:



**DEVELOPER:**

Stockdale Galleria Land Owner, LLC, a Delaware Limited Liability Company

By: \_\_\_\_\_

Shahrod Yari

Its: Managing Partner

STATE OF \_\_\_\_\_ )

) ss.

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20~~16~~19, by Shahrod Yari, Managing Partner of Stockdale Galleria Land Owner, LLC, a Delaware Limited Liability Corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**Exhibit A**  
The Property

[see attached]



**When Recorded Return to:**

City of Scottsdale  
Current Planning Services  
7447 E. Indian School Rd., Suite 105  
Scottsdale, AZ 85251

Agreement No. 201~~86~~-021-COS

**DEVELOPMENT AGREEMENT**

This Development Agreement (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20~~16~~<sup>19</sup>, by Stockdale Galleria Land Owner, LLC, a Delaware limited liability company ("Developer"), and the City of Scottsdale, Arizona, an Arizona municipal corporation ("City"), collectively referred to as "the Parties".

**RECITALS**

A. Arizona Revised Statutes §9-500.05 authorizes the City to enter into a Development Agreement related to real property located inside the incorporated area of the City with a landowner or other person having an interest in the real property.

B. The Property that is the subject of this Agreement consists of approximately 1.979 net acres located at 4419 North Scottsdale Road, 7223 East Shoeman Lane, 7233 East Shoeman Lane, and 7235 East Shoeman Lane, Scottsdale, Arizona (the "Property"). The Property is situated within the incorporated boundaries of the City and is more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference.

C. The Developer is the owner of the Property described in **Exhibit A**.

D. Developer plans to develop the Property by constructing a ~~271,900~~<sup>204,660</sup> +/- square foot commercial building and parking structure ("the Project").

E. Developer desires to utilize available bonus provisions under the Scottsdale Revised City Code, to increase the gross floor area of the Project by ~~120,144~~<sup>144,789</sup> square feet and obtain an additional ~~6639~~<sup>72</sup> feet of Building Height by constructing the development in accordance with the City of Scottsdale's ~~Green Building Program and~~ code, constructing certain Special Improvements in the East Shoeman Lane right-of-way, and paying to the City ~~Two Hundred Sixty Eight Thousand Seven Hundred Ninety Five Dollars and forty three cents (\$268,795.43)~~ One Million Three Hundred Seventy-Three

Thousand Six Hundred Eighty-Eight Dollars and sixty cents (\$1,373,688.60) to be deposited into the City's Downtown Special Improvement Trust Fund to be used by the City for the future construction of Special Improvements that achieve public benefits in the Downtown Area specifically within boundaries of the area depicted by the bold outline on **Exhibit "B"** (the "Future Special and Parking Improvement Area") attached hereto and incorporated herein by reference.

F. In order to complete the Project, the Developer has made Development Applications to the City for a ~~Zoning Ordinance Text Amendment, case number 5-TA-2015; and, a~~ Zoning District Map Amendment, case number 7-ZN-2015#2.

G. The Parties understand that following the conclusion of the required public hearings the Scottsdale City Council may vote to deny or approve the Developer's Development Application requests for the ~~Zoning Ordinance Text Amendment and~~ Zoning District Map Amendment. This Agreement does not require the City Council to vote in any particular way.

H. The Developer will commission and install original artwork on the Property in accordance with the Scottsdale Revised Code.

I. Developer and City acknowledge and agree that development of the Property will benefit the City's residents and the Property.

J. This Agreement is consistent with the portions of the City's General Plan applicable to the Property on the date of this Agreement.

K. The City's governing body has authorized execution of this Agreement by Resolution No. ~~10357~~.

## AGREEMENT

**NOW, THEREFORE,** in consideration of the foregoing Recitals and representations and the mutual covenants and conditions in this Agreement, The Parties agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated into this Agreement by this reference.

2. Effective date. This agreement shall be effective upon execution by the parties.

3. Property Interest of the Developer. Developer warrants that it is the fee title owner of the Property and that the Property is located within the municipal limits of the City.



4. Developers Bonus and Special Improvement Obligations.

4.1 Bonus Development Standards. The Property is zoned Downtown/Downtown Multiple Use Type-3, Planned Block Development, Downtown Overlay (D/DMU-2, PBD, DO) zoning which includes a Development Plan and Bonus Development Standards~~Central Business Downtown Overlay (C-2 DO) and Highway Commercial Downtown Overlay (C-3 DO).~~ Developer will apply for an amendment to the existing Development Plan and Zoning District Map Amendment to rezone the Property to Downtown/Downtown Multiple Use Type-2, Planned Block Development, Downtown Overlay (D/DMU-2, PBD, DO) zoning that includes existing Bonus Development Standards.

4.2 Bonus Provisions. Developer shall be entitled to utilize available bonus provisions under Scottsdale Revised City Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplemental Districts, Section 6.1310 to obtain an increase in gross floor area and obtain additional building height inclusive of roof top appurtenances not to exceed the amount approved in Zoning District Map Amendment, case number 7-ZN-2015#2, for the Project, if Developer:

~~4.2.1 Constructs the entire Project in accordance with the City of Scottsdale's Green Building Program and code, which is the International Green Construction Code (IGCC), as amended and adopted by the City of Scottsdale;~~

4.2.24.2.1 Constructs those certain Special Improvements in the East Shoeman Lane right-of-way, described on **Exhibit "C"** (the "East Shoeman Lane Street Improvements"), pursuant to Section 4.3 below; and

4.2.34.2.2 Pays One Million Three Hundred Seventy-Three Thousand Six Hundred Eighty-Eight Dollars and sixty cents (\$1,373,688.60) ~~Two Hundred Sixty-Eight Thousand Seven Hundred Ninety-Five Dollars and forty-three cents (\$268,795.43)~~ into the City's Downtown Special Improvement Trust Fund (the "In-Lieu Payment for Special Improvements").

4.3 Additional Terms Related to the Special Improvements in the East Shoeman Lane right-of-way.

4.3.1 Developer shall pay for any and all costs and expenses of designing, engineering, permitting, constructing and installing the East Shoeman Lane Street Improvements; such costs and expenses (which shall include, without limitation, costs of labor and materials and professional and consultant fees) shall be a minimum of Four Hundred Sixteen Thousand Two Hundred Seventy Dollars and twenty-five cents (\$416,270.25).



4.3.2 The Developer shall maintain the sidewalks, hardscape, landscape, bicycle racks, pedestrian amenities, and pedestrian lighting improvements constructed in the East Shoeman Lane right-of-way as a condition of obtaining the Special Improvement bonus. The City shall own the East Shoeman Lane Street Improvements after the City has accepted them as complete and final.

4.4 Developer's Additional Terms Related to the In-lieu Payment for Special Improvements.

4.4.1 Prior to the issuance of any permit to construct any vertical improvements, above or below grade, excluding excavation, the Developer shall pay to the City the In-Lieu Payment for Special Improvements. However, the last day the payment can be made without an increase is December 31, ~~2017~~2020, and any unpaid amount after December 31, ~~2017~~2020 is subject to being increased as set forth in Section 4.4.2.

4.4.2 If all or any part of the In-Lieu Payment for Special Improvements has not been paid by December 31, ~~2017~~2020, any unpaid amount shall increase on January 1, ~~2018~~2020, and annually thereafter, by an escalator factor of 3.5% in accordance with the following formula:

$$A = P(1 + 0.035)^{CY-2019(2)17}$$

Where:

A = Dollar amount to be paid

P= Unpaid amount of In-Lieu Payment for Special Improvements

CY = Current year

4.5 City's Additional Terms Related to the use of In-Lieu Payment for Special Improvements.

4.5.1 The City shall deposit the In-Lieu Payment for Special Improvements into the City's Downtown Special Improvement Trust Fund.

4.5.2 The City shall use the In-Lieu Payment for Special Improvements to construct future Special Improvements that serve as a public benefit within the Future Special and Parking Improvement Area.

4.5.3 The City agrees to own and maintain the Special Improvements constructed by the City with the In-Lieu Payment for Special Improvements.

4.6 Failure to Pay. All amounts set forth in paragraphs 4.2.~~23~~ and 4.4.1 of this Agreement shall be paid no later than 12:00 noon on December 31, ~~2018~~2020. If Developer has not made full payment of all amounts, the City shall issue a written notice by regular U.S. Mail to Developer containing a calculation of all outstanding amounts due,



including any increases as a result of escalation. Developer shall pay in full the outstanding amounts to the City by cashier check no later than thirty (30) days from the date of the letter. If payment has not been received by the City in accordance with the demand for payment set forth in the letter, the City will suspend all certificates of occupancy issued for the Project and all operations on the Property shall cease until full payment has been made and the certificates have been reissued.

5. Developer's Removal of Public Parking.

5.1 Payment Amount for the Removal of Public Parking. As part of the development of the Project, Developer may remove and not replace up to eighteen (18) existing public parking spaces in the East Shoeman Lane right-of-way adjacent to the Property (each, a "Removed Space"). Developer shall (i) pay the City twelve thousand nine hundred fifty-eight dollars and thirteen cents (\$12,958.13) per Removed Space as compensation for the City's loss of that public parking space.

5.2 Payment Due. Prior to the issuance to Developer of any permit to construct any improvements that would cause the elimination of any existing public parking spaces in the East Shoeman Lane right-of-way, Developer shall pay to the City the amount specified in Section 5.1. Any payment incurred pursuant to Section 5.1, and payable after January 1, ~~2018~~2020, shall increase in accordance with the fee schedule for in-lieu parking credits, Resolution No. 8153, beginning on January 1, ~~2018~~2020, and the first day of each year thereafter, until paid.

5.3 Parking Improvement Account. The City agrees to deposit the amount paid by the Developer set forth in paragraph 5.1 into a new City account titled the "Downtown Drinkwater Neighborhood Parking Structure Improvements" (the "DDNPSI").

5.4 City's Use of Funds. The City agrees to use the funds deposited into the DDNPSI account to develop a future parking structure within the area as depicted by the bold outline shown on **Exhibit "B"** incorporated herein the "Future Special and Parking Improvement Area".

5.5 Parking Credits. The Developer and the City agree that the Developer will not receive, and the Property will not be assigned, parking space credits for any amount paid by Developer for the removal of public parking spaces in the East Shoeman Lane right-of-way. The Property would still be eligible for parking space credits, if applicable by zoning ordinance, for the purpose of parking calculations for those parking spaces which remain on Shoeman Lane.

6. Supplemental Parking Plan.

6.1 Requirement to provide a Supplemental Parking Plan. If more than ninety-seven percent (97%) of the Office Space Parking is occupied for more than six (6)



consecutive hours during three (3) Work Days in a one-month period (sometimes herein called "Full Capacity") (as measured in a Parking Occupancy Assessment, defined below in section 6.2.1, on the terms and conditions of this Section 6), upon written request from the City Manager, the Developer shall provide a supplemental parking plan to the City Manager within fifteen (15) days of the request for approval. For purposes of this Section 6, (a) "occupied" is defined as a parking space that has a vehicle in it, or is physically obstructed in a manner that prevents a vehicle from being parked in it, or is reserved and is vacant at the time of the parking count, (b) "Work Days" is defined as any day Monday through Friday, the hours from 8:00 A.M. to 5:00 P.M., and, (c) a measurement of Office Space Parking shall be referred to as a "Parking Occupancy Assessment."

## 6.2 Parking Occupancy Assessments.

6.2.1 The City's rights to conduct Parking Occupancy Assessments shall commence when seventy-five percent (75%) of the total gross leasable area of the Project has been issued a Certificate-of-Occupancy. The City Manager shall notify the Developer in writing when Parking Occupancy Assessments are necessary to be conducted. A Parking Occupancy Assessment shall consist of the initial count of parking spaces and a verification recount within five days of the initial count. The verification recount shall be conducted by the City without additional notice to the Developer.

6.2.2 The Developer shall have the discretion of choosing the method of conducting each Parking Occupancy Assessment between (i) the City, or (ii) by a third party Traffic Engineer registered in the State of Arizona. In the written notice to the Developer in accordance with 6.2.1, the City Manager shall provide a minimum of three (3) third party Traffic Engineers that the developer may approve from to conduct the third party Parking Occupancy Assessments. Within seven (7) days of a written notice in accordance with 6.2.1, the Developer shall respond in writing indicating the chosen method to conduct the Parking Occupancy Assessment, and when applicable, the Developer's choice of the third party Traffic Engineer from the list provide by the City Manager. The Developer shall not withhold its approval of one of the third party Traffic Engineers provided by the City. Within thirty (30) days of the City's delivery to Developer, of a written notice with invoices substantiating charges by the elected Traffic Engineer for a Parking Occupancy Assessments, the Developer shall reimburse the City for all reasonable, out-of-pocket, third-party costs of conducting the Parking Occupancy Assessment.

6.2.3 Upon the City Manager providing the Developer a minimum two (2) Work Days written notice, the Developer shall grant the party conducting the Parking Occupancy Assessment and his/her employee(s) reasonable access to all parking facilities within the Project that include Office Space Parking.

6.2.4 The City Manager shall select the Work Days that the assessment is to be conducted the ("Assessment Days"); provided, however, that the Assessment days may not be consecutive and must be three (3) different days of the



week.

6.2.5 If the Parking Occupancy Assessment results give the City the right to request a Supplemental Parking Plan pursuant to Section 6.1, the City shall deliver written notice to Developer permitting Developer thirty (30) days to cure the parking condition prior to the City delivering written notice demanding a Supplemental Parking Plan. On or before the expiration of such thirty (30) day cure period, Developer may request that the City perform another Parking Occupancy Assessment; after which, if the newly performed Parking Occupancy Assessment results in a finding of continued Full Capacity, the City may deliver to Developer written request for a Supplemental Parking Plan.

6.2.6 The City shall not perform more than three (3) Parking Occupancy Assessments in any twelve (12) month period; provided that Parking Occupancy Assessments requested by Developer shall not count toward such maximum.

6.3 Supplemental Parking Plan. The supplemental parking plan shall require the Developer, in its discretion, to either:

6.3.1 secure additional parking spaces for the Project by leasing parking spaces from a public or quasi-public parking facility within nine hundred feet of the Project. If a public or quasi-public parking facility is not available at the time that supplemental parking is required, the City Manager shall allow the Developer to secure additional parking spaces from another property within two thousand six hundred forty (2,640) feet of the Property which shall be through a lease agreement with the property owner of the property that has parking available which is not otherwise required by and accounted for pursuant to the City of Scottsdale's Zoning Ordinance. The additional parking spaces under the supplemental parking plan that are leased by the Developer shall be an amount that decreases the occupied Office Space Parking to less than Full Capacity. If a public or quasi-public parking facility becomes available after the time that supplemental parking is required, any private parking leases in effect at that time shall not be renewed, and subsequent leases if necessary, shall be from the public or quasi-public facility; or

6.3.2 deliver to the City for its review and approval (consent not to be unreasonably withheld), and agree to execute, a parking management plan to reduce parking in the parking structure to less than Full Capacity; the parking management plan may incorporate concepts including, but not limited to (a) free or subsidized employee bus passes, (b) carpool and van pool programs, and/or (c) alternative transit incentives.

6.3.3 After a Supplemental Parking Plan has been agreed upon by City and Developer, Developer may at any time, and from time to time, request that the City perform another Parking Occupancy Assessment. If the re-assessment results find that parking is less than Full Capacity, the Developer may terminate any parking Lease.



6.4 Cost of providing and implementing the Supplemental Parking Plan. Developer shall pay all costs associated with providing and implementing the Supplemental Parking Plan; provided that, notwithstanding the foregoing, and upon verification by the City Manager, the Developer shall have no obligation to lease parking if the fees, rent and other charges for such spaces exceed fair market rate. If the City Manager verifies, in its reasonable discretion, that the lease parking spaces in the public or quasi-public parking facility exceed fair market rate, the Developer may lease available private parking in accordance with Section 6.2.

6.5 Modifications to the Supplemental Parking Plan. The City Manager may approve modifications to the Supplemental Parking Plan provided that the modifications are designed to keep the parking structure under Full Capacity.

6.6 Term of Supplemental Parking Plan Requirement and Other Terms of Section 6. Notwithstanding anything to the contrary herein (or in any Supplemental Parking Plan), Developer's obligations and the City's rights in this Section 6 (and any Supplemental Parking Plan) shall automatically expire, without need for any further notice, on the earlier of: (a) four (4) years after the date of the first Certificate of Occupancy is issued at the Property for the Office Area (defined below), (b) on the date that a Certificate-of-Occupancy is issued for a parking structure constructed on the City-owned property at or near East Stetson Drive, and in between North Wells Fargo Avenue and North Civic Center Boulevard, with the Maricopa County Assessor's Parcel Numbers of 173-41-115 and 173-41-116A, or (c) Developer constructs a fourth level of parking (which may be underground).

## 7. Artwork.

7.1 Artwork Requirement. Developer shall commission and install an original artwork on the Property in accordance with Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplementary Districts, Section 6.1309. – Cultural Improvements Program requirements. And Article VII, - General Provisions, Section 7.1000. – Cultural Improvements Program, through Section 7.1017.

7.2 Artwork Cost Requirement. The minimum cost of the artwork shall be calculated in accordance with Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance, Article VI, - Supplementary Districts, Section 6.1309. – Cultural Improvements Program requirements. And Article VII, - General Provisions, Section 7.1004. – General Provisions.

## 7.3 Conceptual Art Plan Approval.

7.3.1 The Developer and the City agree that the Developer may defer approval of the Conceptual Art Plan from the Cultural Council and Development Review Board in accordance with the Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance, Article VII, - General Provisions, Section 7.1014. – Deferment of



artwork of the Cultural Improvements Program.

7.3.2 The Developer agrees that the approval of the Conceptual Art Plan from the Cultural Council and from the Development Review Board shall be obtained prior to the issuance of any building permit to construct any vertical improvements, above or below grade, excluding excavation, on the Property.

7.4 Artwork Installation and Certificate of Completion.

7.4.1 City and the Developer agree that the Developer may obtain a Temporary Certificate-of-Occupancy, as determined by the City's Building Official, for the parking garage that is connected to the Project prior to the Certificate of Completion for the artwork so that the garage may be utilized during construction of the Project by the Developer's construction contractor and employees that are associated with construction of the Project.

7.4.2 The Developer agrees that the City may revoke any Temporary Certificate-of-Occupancy issued by the City's Building Official for the parking garage that is connected to the Project if the Developer fails to install the artwork prior to obtaining a final site inspection for the Project.

7.4.3 Exclusive of paragraph 7.4.1, Developer agrees to obtain a Certificate of Completion from the Zoning Administrator for the installation of the Artwork prior to the issuance of a Temporary Certificate-of-Occupancy, Final Site Inspection, Certification of Shell Building or Certificate-of-Occupancy for the Project.

7.5 Ownership and Maintenance of Artwork. The current Property owner(s) and its successors and assigns shall own and maintain the Artwork in accordance with the Scottsdale Revised Code, Appendix B – Basic Zoning Ordinance.

8. Project Parking Space Distribution. Developer shall provide a minimum of nine hundred ~~sixty-seven seventy~~ (96770) parking spaces (the "Total Parking Spaces") at the Property. ~~Eight hundred thirty-six~~ ~~Nine hundred twenty~~ (836920) parking spaces (the "Office Space Parking") of the Total Parking Spaces provided shall be provided for the office area (the "Office Area") (approximately ~~250,900~~ ~~191,023~~ square feet) of the Project, and ~~fiftyseventy~~ (7050) parking spaces ("Retail Parking Spaces") of the Total Parking Spaces shall be provided for the retail area (approximately ~~21,000~~ ~~13,637~~ square feet) of the Project.

a. Retail Parking Spaces. The Retail Parking Spaces:

- a) Shall be located on the grade level of the parking garage, and only those Retail Parking Spaces that do not fit on grade level of parking garage may be located on 1st level above grade and on

vehicle ramp from the grade level 1st level above grade of the parking garage;

- b) shall be nearest to the East Shoeman Lane vehicle entrance/exit;
- c) shall not be restricted by gate access or other restrictive measure, except for the maximum amount of time that a vehicle may occupy the parking space;
- d) shall not, for the purpose of counting Retail Parking Spaces, include more than 2 accessible parking spaces; and
- e) shall include, for each Removed Space, one Retail Parking Space that has a maximum 3-hour time parking limit.

b. Modification to the Distribution of Parking Spaces. The City Manager or designee may approve alternative distribution of the parking spaces for the retail and office areas, provided that a minimum of one (1) parking space is provided for each two hundred fifty (250) square feet of retail gross floor area.

9. Compliance with all Laws. Developer shall develop the Property in compliance with all Federal, State, County and local laws, ordinances, rules, regulations, permit requirements, or any other policies of the City.

10. General Provisions.

10.1 Notices. All notices, filings, consents, approvals, and other communications provided for herein or given in connection herewith ("notices") shall be validly given, filed, made, delivered, or served if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City:                      The City of Scottsdale  
   Attention: City Attorney  
   3939 North Drinkwater Boulevard  
   Scottsdale, Arizona 85251

Copy to:                                City of Scottsdale  
   Attention: Zoning Administrator  
   Planning and Development Services  
   Department  
   7447 E. Indian School Rd., Suite 105  
   Scottsdale, AZ 85251



City of Scottsdale  
Attention: City Manager  
3939 North Drinkwater Boulevard  
Scottsdale, AZ 85251

If to Developer: Stockdale Galleria Land Owner, LLC  
Attention: Shahrod Yari  
4343 N. Scottsdale Rd., Suite 180  
Scottsdale, AZ 85251

Copy to: Withey Morris, PLC  
Attention: Jason Morris  
2525 East Arizona Biltmore Circle, Suite A-212  
Phoenix, AZ 85016

10.2 Mailing Effective. Notices given by registered or certified mail shall be deemed delivered 72 hours following deposit in the U.S. Postal Service in the manner set forth above.

10.3 Approvals. When a party's consent is required pursuant to this agreement, the consenting party shall not unreasonably withhold, delay or condition its approval.

10.4 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement

10.5 Headings. The descriptive headings of the paragraphs of the Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

10.6 Authority. The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement.

10.7 Entire Agreement. The Agreement, including exhibits, constitutes the entire Agreement between the parties.

10.8 Severability. If any provision of this Agreement limiting the uses of the Property is declared void or unenforceable, then the entire Agreement shall be void. If any other provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the fundamental purposes of this Agreement are not defeated by such

severability.

10.9 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The Parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Maricopa County, Arizona, and the Parties hereby waive any right to object to such venue.

10.10 Recordation. This Agreement, and any amendment or cancellation of this Agreement, shall be recorded, in its entirety, in the official records the county recorder's office in Maricopa County, Arizona, no later than ten (10) days after the effective date of this Agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

10.11 Remedies. If any party to this Agreement breaches any provision of the Agreement, the non-defaulting party shall be entitled to all remedies available at both law and in equity, including specific performance.

10.12 Attorneys' Fees and Costs. If any party brings a legal action either because of a breach of the Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.

10.13 Binding Effect. The benefits and burdens of this Agreement shall run with the Property and be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest, and assigns. This Agreement shall be incorporated by reference in any instrument purporting to convey an interest in the Property.

10.14 Third Parties. There are no third party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

10.15 No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

10.16 Contract Administrator. The City's contract administrator for this Agreement shall be City Manager, for the City of Scottsdale, or designee.

[Signatures on following page]



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

THE CITY OF SCOTTSDALE:  
an Arizona municipal corporation

ATTEST:

By: \_\_\_\_\_  
Carolyn Jagger, City Clerk

By: \_\_\_\_\_  
W. J. "Jim" Lane, Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_  
Bruce Washburn, City Attorney  
By: Joe Padilla, Deputy City Attorney

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, ~~2016~~2019, by W. J. "Jim" Lane, Mayor of the City of Scottsdale, Arizona, a municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**DEVELOPER:**

Stockdale Galleria Land Owner, LLC, a Delaware Limited Liability Company

By: \_\_\_\_\_

Shahrod Yari

Its: Managing Partner

STATE OF \_\_\_\_\_ )

) ss.

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016~~19~~, by Shahrod Yari, Managing Partner of Stockdale Galleria Land Owner, LLC, a Delaware Limited Liability Corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:



**Exhibit A**  
The Property

[see attached]

**GALLERIA**  
**LEGISLATIVE DRAFT OF**  
**DEVELOPMENT STANDARDS**

Development Standards are per the previously approved standards found in zoning **Case No. 101-ZN-87** and **30-ZN-1990#2** approved in 1987 and 2016 respectively. **Case No. 30-ZN-1990#2** enabled additional height for the garage addition up to ninety (90) feet. A copy of the amended development standards for **Case No. 101-ZN-87** is attached hereto:



## AMENDED DEVELOPMENT STANDARDS

### GALLERIA

#### II. Site Requirements

##### 2. Minimum Front Building Setback

Location: Southwest Elevation

Sec. 5.3061 Additional regulations.

H. Buildings fronting on Camelback Road, Indian School Road, and on Scottsdale Road north from Camelback Road and south from Osborn Road to the D district boundary, shall be set back forty (40) feet from the planned curbline. Buildings fronting on the couplet road and located in a type 2 area shall be set back thirty (30) feet from the planned curbline. 29 FOOT SETBACKS PROPOSED AT PLANNED CURBLINE ALONG COIPLT.

Sec. 5.3066 Building projections.

Maximum projections permitted into a required setback area but not beyond property line shall be as follows:

- A. Fireplaces or chimneys: Two (2) feet.
- B. Uncovered porches, terraces, platforms, underground garages, and patios not more than three (3) feet above grade: May extend into a front setback yard not closer than five (5) feet to the property line. UNDERGROUND PARKING GARAGE EXTENDS UNDER ENTIRE WIDTH OF THE SCOTTSDALE LOOP ROAD.

##### 3. Minimum Interior Side Building Setback

Location: East Property Line

Sec. 5.3066. Building projections.

Maximum projections permitted into a required setback area but not beyond property line shall be as follows:

B. Uncovered porches, terraces, platforms, underground garages, and patios not more than three (3) feet above grade: May extend into a front setback yard not closer than five (3) feet to the property line. CONCOURSE LEVEL AND UNDERGROUND GARAGE EXTEND BEYOND PROPERTY LINE ONTO PARKING STRUCTURE SITE.

D. Balconies, stairs, canopies, awnings, and covered porches: Four (4) feet beyond a front or rear setback and two (2) feet beyond a side setback, not exceeding twenty-five (25) percent of the length of the adjoining property line. BRIDGE AND TERRACE LEVELS WILL EXTEND UP TO PROPERTY LINE.

Case 101-Z-87  
Galleria

4. Minimum Corner Setback

Location: South Corner

Sec. 5.3066

D. Balconies, stairs, canopies, awnings, and covered porches: Four (4) feet beyond a front or rear setback and two (2) feet beyond a side setback, not exceeding twenty-five (25) percent of the length of the adjoining property line. BRIDGE AND TERRACE LEVELS WILL EXTEND UP TO PROPERTY LINE.

5. Minimum Rear Building Setback

Location: North Property Line

Sec. 5.3061

I. No building wall shall be so placed as to create a yard measuring less than three (3) feet at a property line between two (2) private properties. BUILDING EXTENDS TO PROPERTY LINE, PER PLAN

Sec. 5.3066. Building projections.

Maximum projections permitted into a required setback area but beyond property line shall be as follows:

B. Uncovered porches, terraces, platforms, underground garages, and patios not more than three (3) feet above grade: May extend into a front setback yard not closer than five (5) feet to the property line. CONCOURSE LEVEL AND UNDERGROUND GARAGE EXTENDS TO PROPERTY LINE (ALL BELOW GRADE)

III. Building Design Requirements

3. Building Size Maximums

Location: Southwest & Southeast Property Lines

Sec. 5.3061

D. Maximum building length shall not exceed:

1. Three hundred fifty (350) feet in any horizontal dimension.
2. Five hundred fifty (550) feet total for any two (2) adjacent building enclosure dimensions (e.g. front and side).
3. Two hundred (200) feet for the upper portion of a building above the thirty-eight (38) foot elevation.

ELEVATIONS ALONG STETSON AND COULET EXCEED MAXIMUM LENGTHS, PER PLAN.



6. Building Envelope Inclined Stepback Plane

Location: North, South, West Property Line

Sec. 5.3060 - 1:1 SLOPE INCLINED STEPBACK PLANE FROM 26 FEET HIGH STEPBACK LINE ON FRONT, SIDES AND REAR.  
PER PLAN

7. Encroachments Into Inclined Stepback Plane

Location: North, South, West Property Line

Sec. 5.3063. Exceptions to height limits.

A. A maximum vertical building encroachment of fifteen (15) feet is permitted into the inclined stepback plane for not more than twenty-five (25) percent of the length of the building's elevation.

B. The ridge of sloping roof or a parapet wall, in addition to A above, may encroach vertically into the inclined stepback plane and into the maximum allowable height no more than four (4) feet in type 2 and type 1.5 areas only.

C. The following paragraph supersedes sections 7.100-7.103 (exceptions to height restrictions) which shall not apply within the D district.

REAR AND SIDE ELEVATIONS, ON BRIDGE AND TERRACE LEVELS FLOOR AND ROOF PLATES AND EXTERIOR WALLS EXTEND TO STREETLEVEL BUILDING LINE.

4. Spacing Between Buildings

Location: East Property Line

Sec. 5.3061

E. Spacing between two (2) buildings on the same site shall be not less than ten (10) percent of the larger building's two (2) longest adjacent sides at the space (e.g. front and side). SPACING BETWEEN BUILDING ON EAST PROPERTY LINE IS 25 FEET, PER PLAN

5. Large Walls

A. Vertical Dimension

Sec. 5.3061

F. Large wall surface shall be controlled in vertical dimension and horizontal dimension by the following:

1. Vertical dimension: A tall wall shall be set back an additional two (2) feet for every foot it measures in excess of thirty-eight (38) feet in vertical dimension. Such a wall shall constitute less than fifty (50) percent of the building's length as projected to any street or alley frontage. (Parallel vertical wall planes offset less than ten (10) feet shall be considered to be in the same plane). PER PLAN
2. Horizontal dimension: No wall surface shall be more than two hundred (200) feet long without a "break" (a break shall be an interruption of the building wall plane with either a recess or an offset measuring at least twenty (20) feet in depth, and one-quarter of the building in length. The offset angle constituting the "break" recess shall be between ninety (90) degrees and forty-five (45) degrees to the wall). PER PLAN

6. Building Envelope Inclined Stepback Plane

Location: Per Plan

Sec. 5.3063. Exceptions to height limits.

A. A maximum vertical building encroachment of fifteen (15) feet is permitted into the inclined stepback plane for not more than twenty-five (25) percent of the length of the building's elevation.

B. The ridge of sloping roof or a parapet wall, in addition to A above, may encroach vertically into the inclined stepback plane and into the maximum allowable height no more than four (4) feet in type 2 and type 1.5 areas only. PER PLAN.

Sec. 5.3061 F.1.

Location: Per Plan

F. Large wall surfaces shall be controlled in vertical dimension and horizontal dimension by the following:

1. Vertical dimension: A tall wall shall be set back an additional two (2) feet for every foot it measures in excess of thirty-eight (38) feet in vertical dimension. Such a wall shall constitute less than fifty (50) percent of the building's length as projected to any street or alley frontage. (Parallel vertical wall planes offset less than ten (10) feet shall be considered to be in the same plane). PER PLAN

6. Building Envelope Inclined Stepback Plane

Location: North, South, West Property Line

Sec. 5.3060 - 1:1 SLOPE INCLINED STEPBACK PLANE FROM 26 FEET HIGH STEPBACK LINE ON FRONT, SIDES AND REAR, PER PLAN



Case 101-Z-87  
Galleria

7. Encroachments Into Inclined Stepback Plane

Location: North, South, West Property Line

Sec. 5.3063. Exceptions to height limits.

A. A maximum vertical building encroachment of fifteen (15) feet is permitted into the inclined stepback plane for not more than twenty-five (25) percent of the length of the building's elevation.

B. The ridge of sloping roof or a parapet wall, in addition to A above, may encroach vertically into the inclined stepback plane and into the maximum allowable height no more than four (4) feet in type 2 and type 1.5 areas only.

C. The following paragraph supersedes sections 7.100-7.103 (exceptions to height restrictions) which shall not apply within the D district.

REAR AND SIDE ELEVATIONS, ON BRIDGE AND TERRACE LEVELS FLOOR AND ROOF PLATES AND EXTERIOR WALLS EXTEND TO STREETLEVEL BUILDING LINE.

## 5TH AVENUE BUILDING

- 11 Site Requirements
2. Minimum Front Building Setback

Location Northeast Property Line

### Sec. 5.3061 Additional regulations.

H. Buildings fronting on Camelback Road Indian School Road and on Scottsdale Road north from Camelback Road and south from Osborn Road to the D district boundary shall be set back forty (40) feet from the planned curbline. Buildings fronting on the couplet road and located in a type 2 area shall be set back thirty (30) feet from the planned curbline. 19 FEET SETBACKS PROPOSED FROM PLANNED CURB ABOVE STREET LEVEL. 29 FEET SETBACKS PROPOSED FROM PLANNED CURB AT STREET LEVEL.

Location: Southeast Property line

Sec. 5.3060. 20 feet from planned curb except designated street frontages PER PLAN

### Sec. 5.3066. Building Projections.

Maximum projections permitted into a required setback area but not beyond property line shall be as follows:

B. Uncovered porches, terraces, platforms, underground garages and patios not more than three (3) feet above grade: May extend into a front setback yard not closer than five (5) feet to the property line. UNDERGROUND LEVELS EXTEND TO PROPERTY LINE

D. Balconies, stairs, canopies, awnings, and covered porches: Four (4) feet beyond a front or rear setback and two (2) feet beyond a side setback, not exceeding twenty-five (25) percent of the length of the adjoining property line. LEVELS ABOVE STREET EXTEND TO PROPERTY LINE

### Sec. 5.3081. (P) pedestrian overlay district.

A. Purpose. The purpose of the (P) pedestrian overlay district is to augment site development standards and land use regulations in order to obtain and preserve the compact character of certain pedestrian-oriented areas. The overlay district requirements are intended to encourage development and redevelopment that enhances the scale of the street frontages and the architecture, and support of pedestrian-linked activities.

B. Boundaries. The boundaries of the downtown shopping special use are shall be as indicated on the zoning district map by a "P" designator.

C. Site development regulations. Site development standards for the (P) Overlay District shall be those specified in section 5.3060 schedule B with the addition of the following requirements:



Case 101-Z-87  
5th Avenue Building

1. Covered Walkways On designated frontages shown on the zoning district map (or on a supplementary map illustrating the application of regulations in the special use areas), a continuous covered walk shall be required with the column line three (3) feet minimum from the planned curb. At these frontages, a required twelve foot building line and building setback shall supersede schedule B requirements. Where a property line is more than twelve (12) feet from the planned curb, the required building line shall be considered to be the property line. COVERED WALKWAY ALONG 5TH AVENUE PER PLAN

Location: West Property Line

Sec. 5.3060 20 feet from planned curb except designated street frontages  
BUILDING FACE EXTENDS TO PROPERTY LINE AT STREET LEVEL

Sec. 5.3066. Building projections.

B. Uncovered porches, terraces, platforms, underground garages, patios not more than three (3) feet above grade: May extend into a front yard not closer than five (5) feet to the property line. CONCOURSE LEVEL EXTENDS TO PROPERTY LINE

### 3. Minimum Interior Side Building Setback

Location: North Property Line

Sec. 5.3061

I. No building wall shall be so placed as to create a yard measuring less than three (3) feet at a property line between two (2) private properties. NO YARD PROPOSED BETWEEN THIS PROPERTY AND THE PACIFIC FISH COMPANY TO THE NORTH.

Sec. 5.3066

B. Uncovered porches, terraces, platforms, underground garages, patios not more than three (3) feet above grade: May extend into a front yard not closer than five (5) feet to the property line. CONCOURSE LEVEL EXTENDS BEYOND PROPERTY LINE

C. Cornices, eaves, and ornamental features: Two (2) feet.

D. Balconies, stairs, canopies, awnings, and covered porches: Four (4) feet beyond a front or rear setback and two (2) feet beyond a side setback, not exceeding twenty-five (25) percent of the length of the adjoining property line. BRIDGE AND TERRACE LEVELS EXTEND BEYOND PROPERTY LINE

### 4. Minimum Corner Side Building Setback

Location: Southwest and Northwest Property Line

Case 101 Z 87  
5th Avenue Building

Sec. 53066

B. Uncovered porches, terraces, platforms, underground garages, patios not more than three (3) feet above grade. May extend into a front yard not closer than five (5) feet to the property line.

C. Cornices, eaves, and ornamental features: Two (2) feet.

D. Balconies, stairs, canopies, awnings, and covered porches: Four (4) feet beyond a front or rear setback and two (2) feet beyond a side setback, not exceeding twenty five (25) percent of the length of the adjoining property line. SETBACKS AT THE NORTHWEST AND SOUTHWEST CORNERS, PER PLAN

5. Minimum Rear Building Setback

Location: North Property Line

Sec. 5-3061

I. No building wall shall be so placed as to create a yard measuring less than three (3) feet at a property line between two (2) private properties. NO YARD ZERO (0) SETBACK, IS PROVIDED BETWEEN THIS PROPERTY AND THE PACIFIC FISH COMPANY.

III. Building Design Requirements

4. Spacing Between Building

Sec. 5-3061

E. Spacing between two (2) buildings on the same site shall be not less than ten (10) percent of the larger building's two (2) longest adjacent sides at the space (e.g. front and side). PER PLAN

5. Large walls

a. Vertical Dimension

Sec. 5.3061

F. Large wall surfaces shall be controlled in vertical dimension and horizontal dimension by the following:

1. Vertical dimension: A tall wall shall be set back an additional two (2) feet for every foot it measures in excess of thirty eight (38) feet in vertical dimension. Such a wall shall constitute less than fifty (50) percent of the building's length as projected to any street or alley frontage. (Parallel vertical wall planes offset less than ten (10) feet shall be considered to be in the same plane). ELEVATOR ENCLOSURE INCREASES INTO SET BACK. PER PLAN

b. Horizontal Dimensions



Case 101 Z-87  
5th Avenue Building

Sec. 5 3061 F. 2

2. Horizontal dimension No wall surface shall be more than two hundred (200) feet long without a "break" (a break shall be an interruption of the building wall plane with either a recess or an offset measuring at least twenty (20) feet in depth, and one-quarter of the building in length. The off-set angle constituting the "break" recess shall be between ninety (90) degrees and forty-five (45) degrees to the wall). PER PLAN

6. Building Envelope Inclined Stepback Plane

Location: Northeast Property Line

Sec. 5-3060 - 20 ft. setback from planned curb

ELEVATOR ENCLOSURES ENCROACH INTO THE STEPBACK PLANE, PER PLAN

7. Encroachments Within Stepback Plane

Location: Northeast Corner

Sec. 5.3063. Exceptions to height limits.

A. A maximum vertical building encroachment of fifteen (15) feet is permitted into the inclined stepback plane for not more than twenty-five (25) percent of the length of the building's elevation.

B. The ridge of sloping roof or a parapet wall, in addition to A above, may encroach vertically into the inclined stepback plane and into the maximum allowable height no more than four (4) feet in type 2 and type 1.5 areas only.

C. The following paragraph supersedes sections 7.100-7.103 (exceptions to height restrictions) which shall not apply within the D district. PEDESTRIAN BRIDGE ATTACHMENT ENCROACHES INTO STEPBACK PER PLAN

## PARKING STRUCTURE

### II. Site Requirements

#### 2. Minimum Front Building Setback

Location: East Property Line

#### Sec. 5-3066. Building projections.

Maximum projections permitted into a required setback area but not beyond property line shall be as follows:

- B. Uncovered porches, terraces, platforms, underground garages, and patios not more than three (3) feet above grade: May extend into a front setback yard not closer than five (5) feet to the property line. UNDERGROUND PARKING WALL EXTENDS TO PROPERTY LINE

Location: West Property Line

#### Sec. 5.3066. Building projections.

Maximum projections permitted into a required setback area but not beyond property line shall be as follows:

- B. Uncovered porches, terraces, platforms, underground garages, and patios not more than three (3) feet above grade: May extend into a front setback yard not closer than five (5) feet to the property line. UNDERGROUND PARKING WALL EXTENDS IN PROPERTY LINE.

#### 3. Minimum Interior Side Building Setback

Location: North & South Property Line

#### Sec. 5.3061

I. No building wall shall be so placed as to create a yard measuring less than three (3) feet at a property line between two (2) private properties. NO YARD, ZERO (0) FOOT SETBACK BETWEEN PRIVATE PROPERTIES

#### 4. Minimum Corner Side Building Setback

Location: Northeast and Southeast Property Line

#### Sec. 5-3066. Building projections.

Maximum projections permitted into a required setback area but not beyond property line shall be as follows:



- B. Uncovered porches, terraces, platforms, underground garages, and patios not more than three (3) feet above grade. May extend into a front setback yard not closer than five (5) feet to the property line. UNDERGROUND PARKING WALL EXTENDS TO PROPERTY LINE

### III. Building Design Requirements

- 2a. Bonused Height maximum 200,000 sq. ft. minimum parcel - maximum 5 levels 6 LEVEL, PROPOSED

#### 5. Large Walls

- b. Horizontal dimension maximum

Location: North and South Property Lines

#### Sec. 5.3061 F

2. Horizontal dimension: No wall surface shall be more than two hundred (200) feet long without a "break" (a break shall be an interruption of the building wall plane with either a recess or an offset measuring at least twenty (20) feet in depth, and one-quarter of the building in length. The off-set angle constituting the "break" recess shall be between ninety (90) degrees and forty-five (45) degrees to the wall). WALL SURFACE 212 FEET LONG WITHOUT A BREAK

#### 4. Spacing Between Building

Location: West Property Line

#### Sec. 5.3061

E. Spacing between two (2) buildings on the same site shall be not less than ten (10) percent of the larger building's two (2) longest adjacent sides at the space (e.g. front and side). 25 FOOT SPACING PROPOSED

#### 6. Building Envelope Inclined Stepback Plane

Location: Per Plan

#### Sec. 5.3063. Exceptions to height limits.

A. A maximum vertical building encroachment of fifteen (15) feet is permitted into the inclined stepback plane for not more than twenty-five (25) percent of the length of the building's elevation.

B. The ridge of sloping roof or a parapet wall, in addition to A above, may encroach vertically into the inclined stepback plane and into the maximum height no more than four (4) feet in type 2 and type 1.5 areas only. PER PLAN

Case 101-Z 87  
Parking Structure

Location: Per Plan

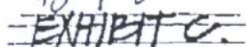
Sec. 5.3061

F. Large wall surfaces shall be controlled in vertical dimension and horizontal dimension by the following:

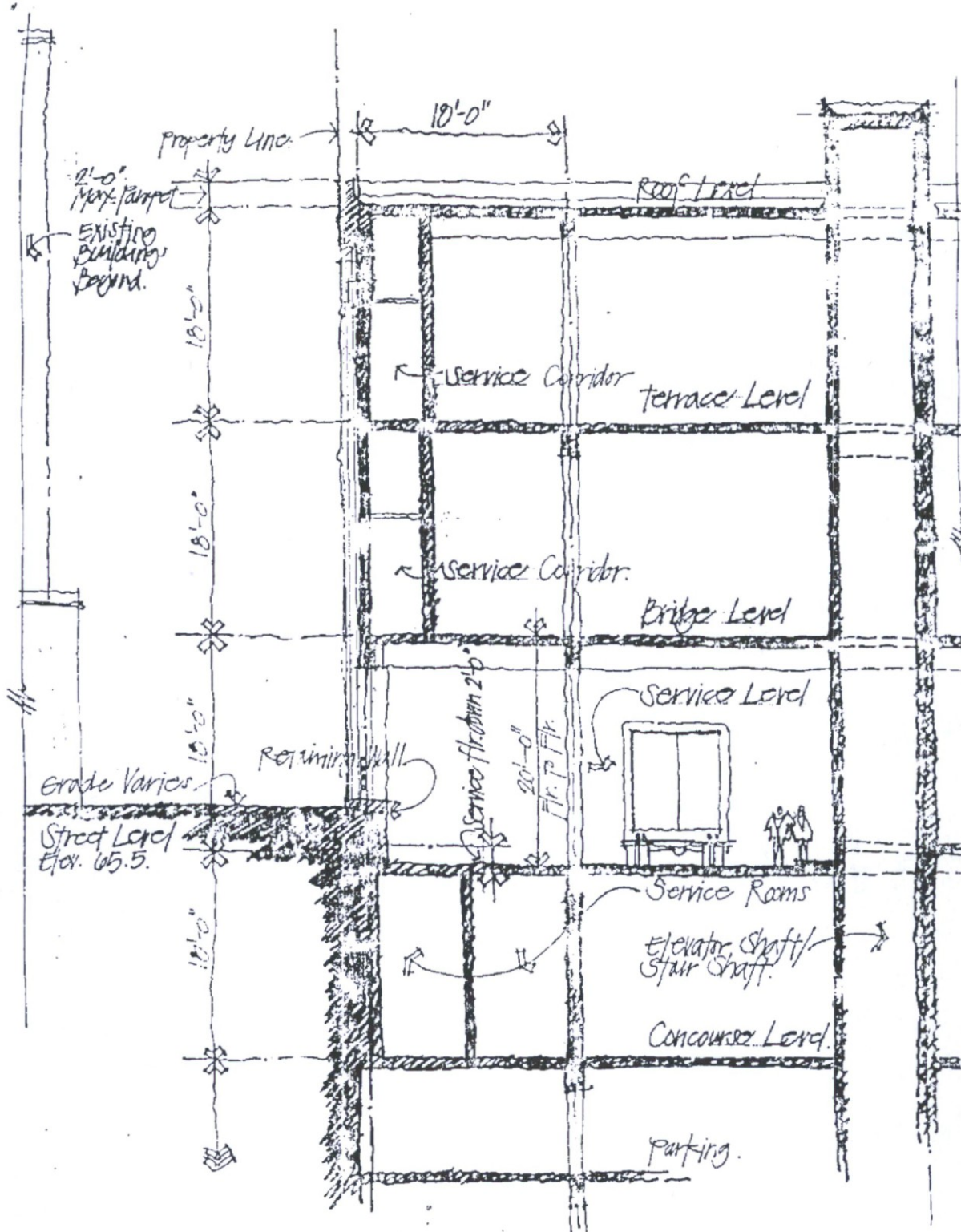
1. Vertical dimension: A tall wall shall be set back an additional two (2) feet for every foot it measures in excess of thirty-eight (38) feet in vertical dimension. Such a wall shall constitute less than fifty (50) percent of the building's length as projected to any street or alley frontage. (Parallel vertical wall planes offset less than ten (10) feet shall be considered to be in the same plane). PER PLAN



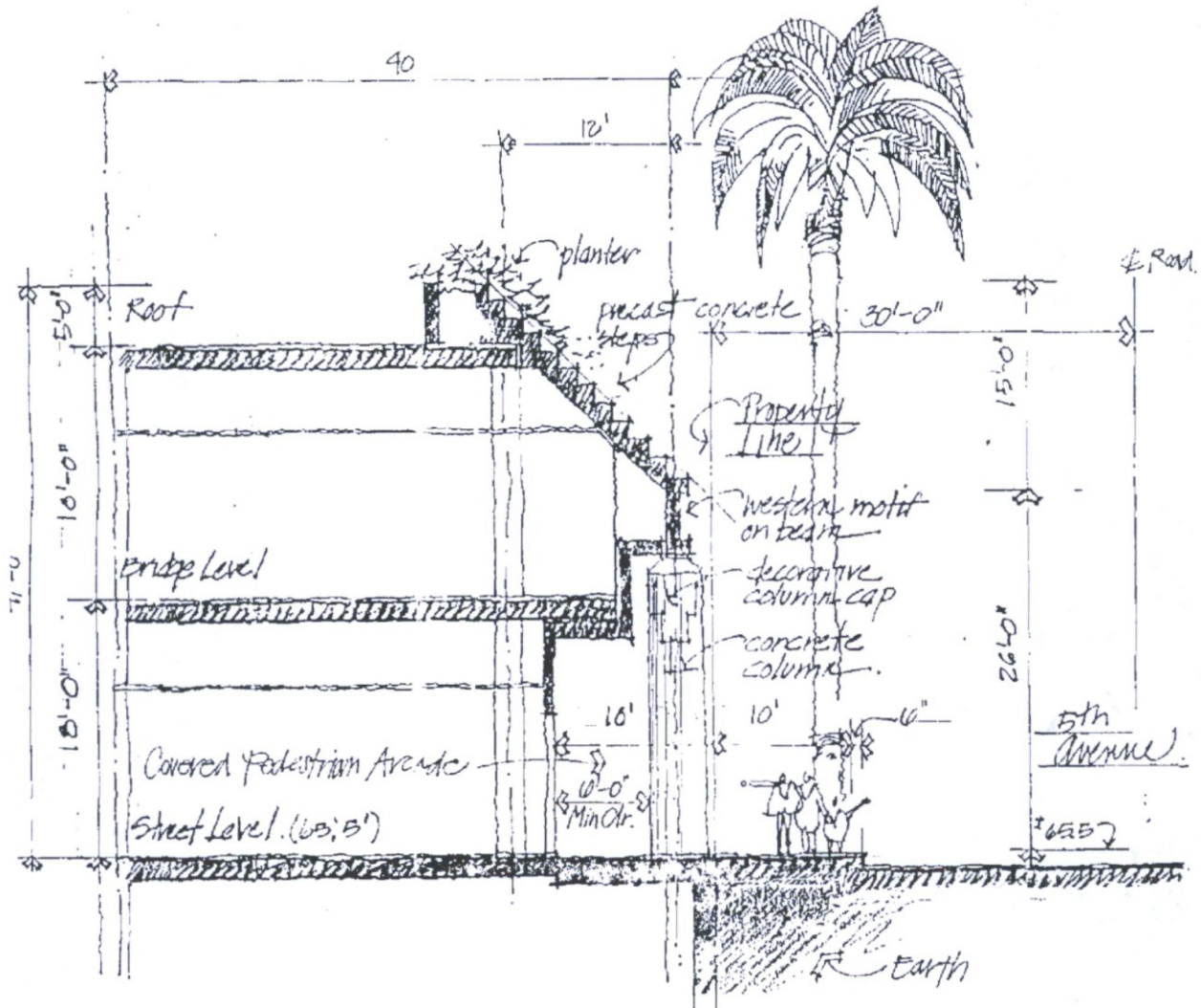








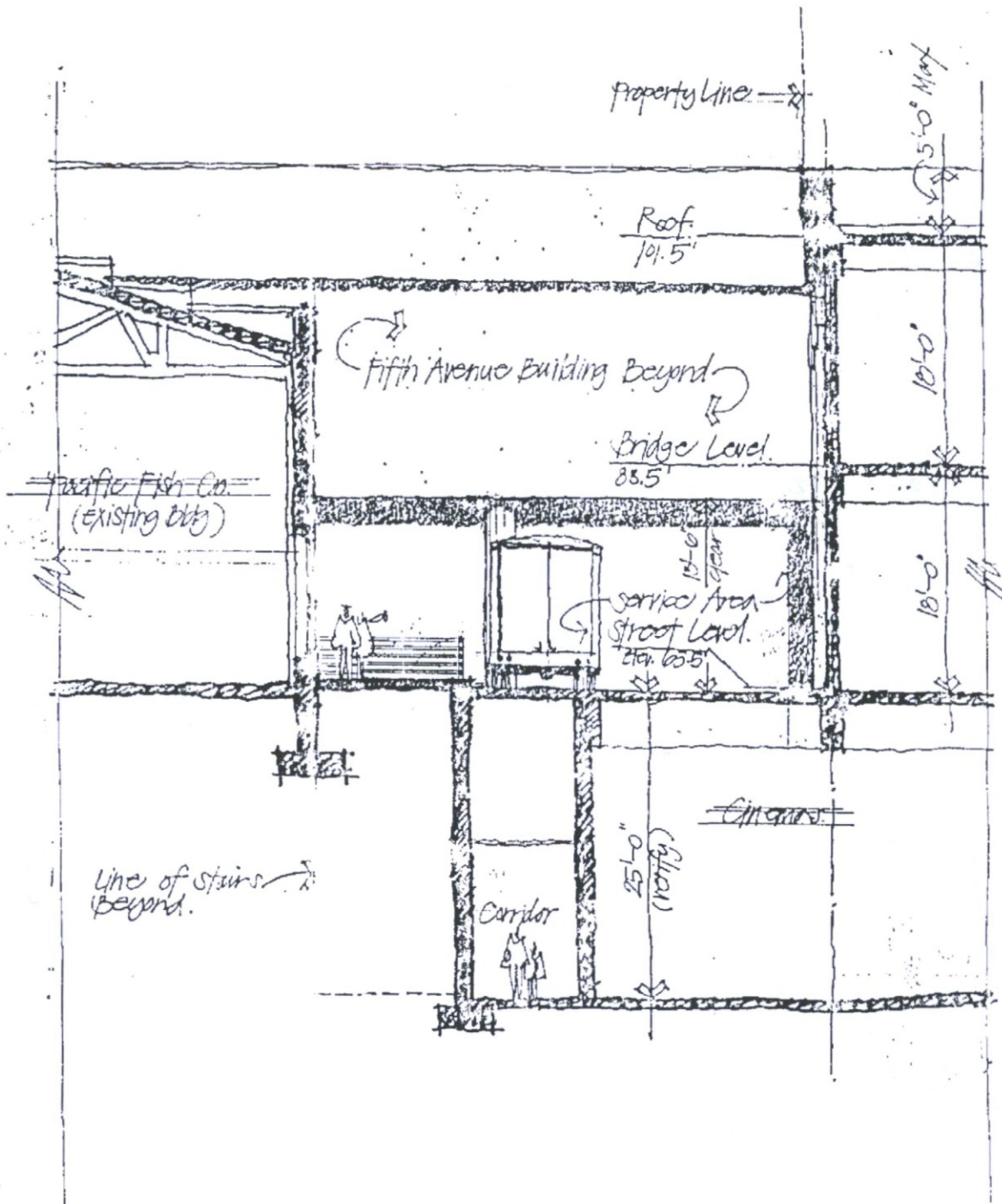
Galleria Building  
 Partial Section @ North Wall.  
 1/2" = 1'-0"  
 EXHIBIT D



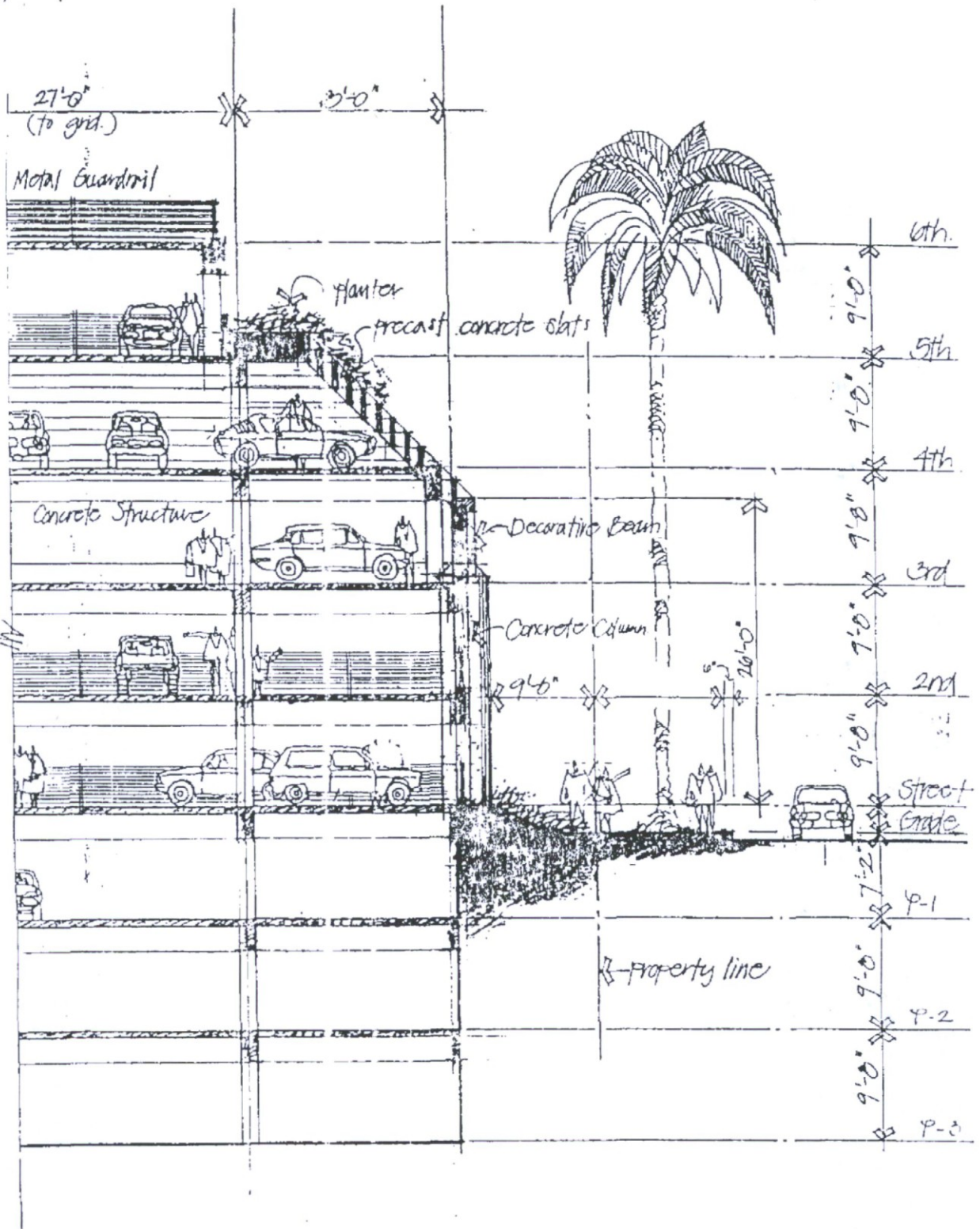
5th Avenue Building  
 Partial Section @ 5th Avenue  
 1/8" = 1'-0"

EXHIBIT E



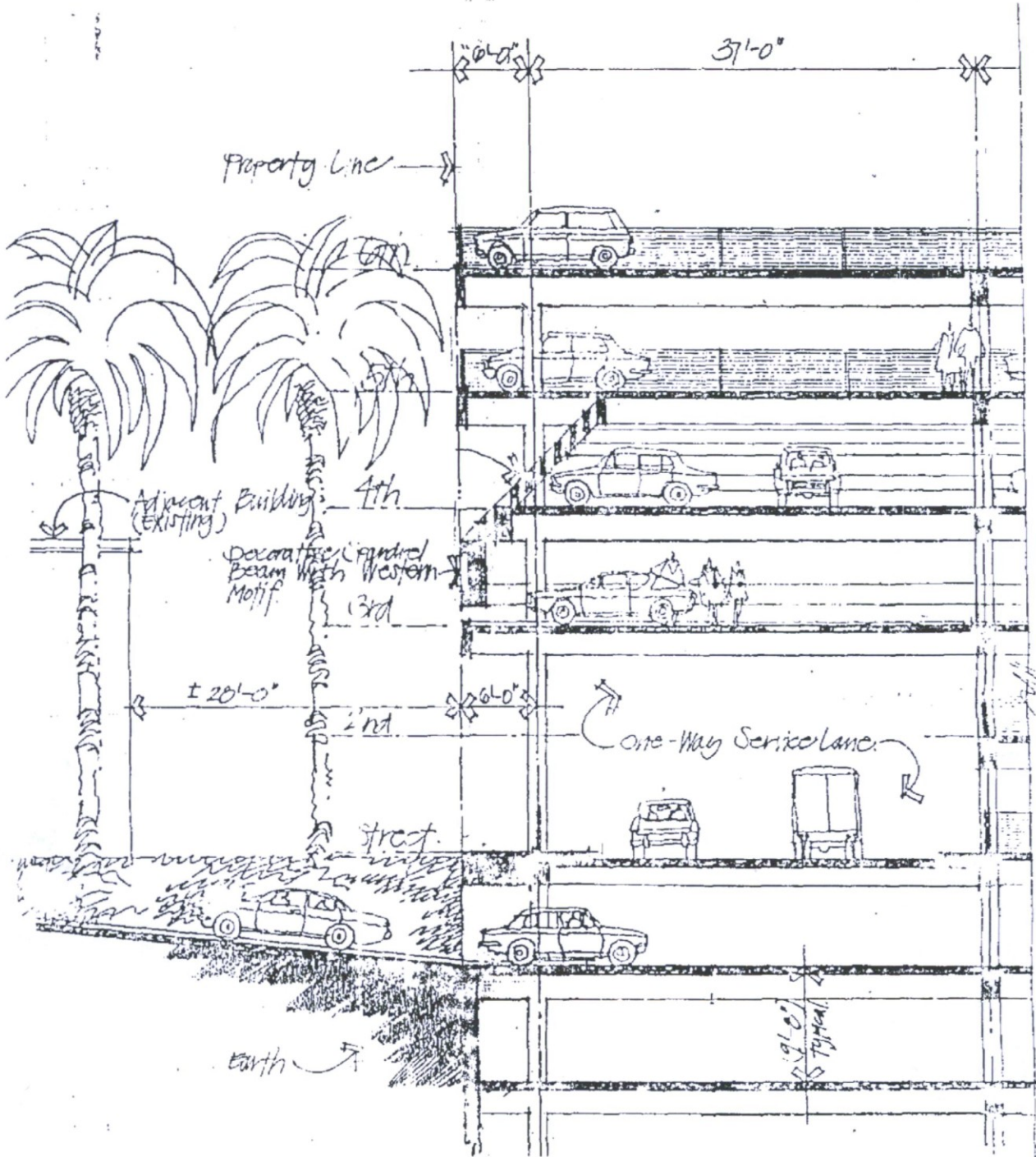


Fifth Avenue Building  
Partial Section @ North Wall.  
1/8" = 1'-0"  
EXHIBIT II.

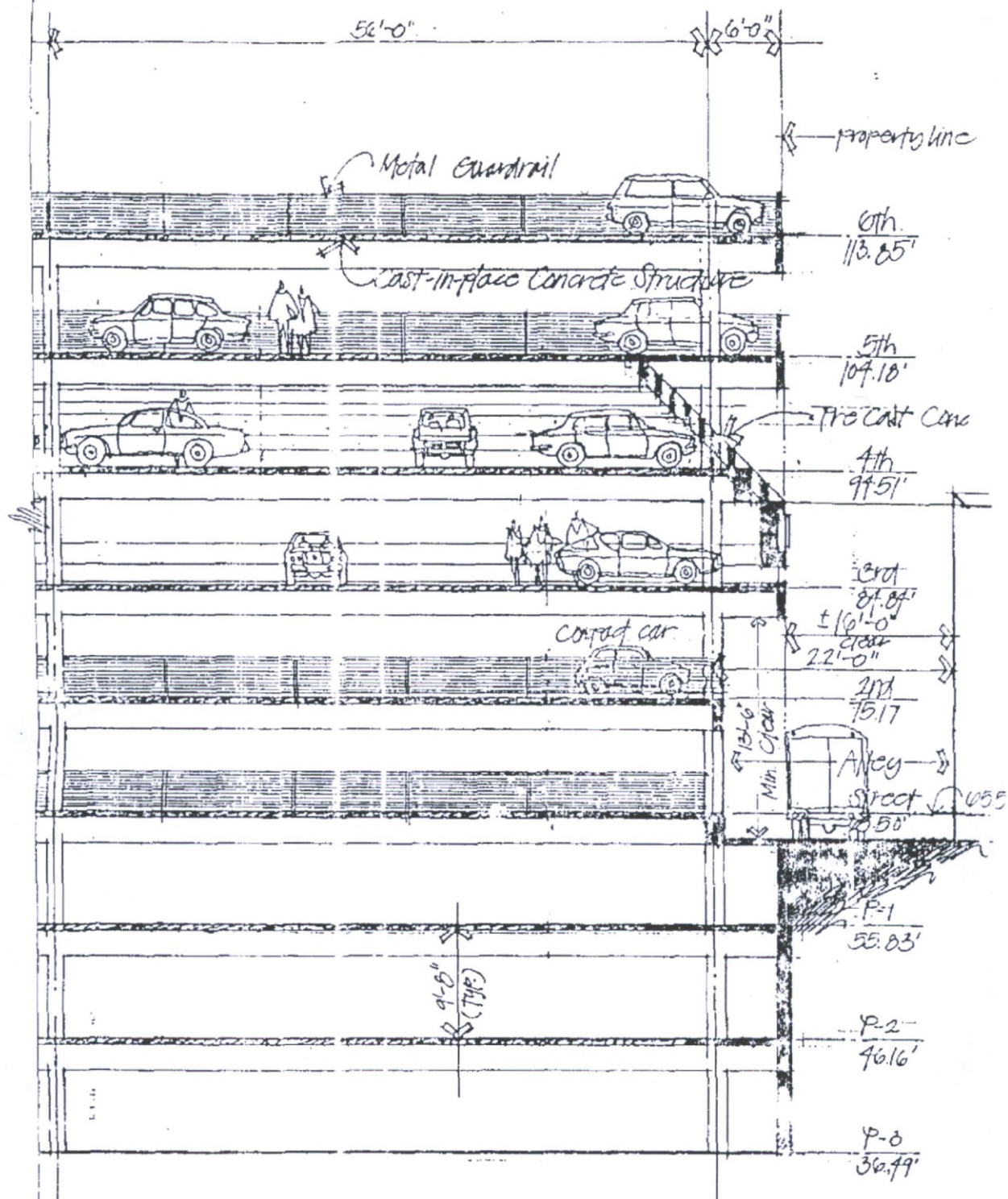


Parking Structure  
 Partial Section Wells Fargo  
 $\frac{1}{8}'' = 1'-0''$   
 EXHIBIT J



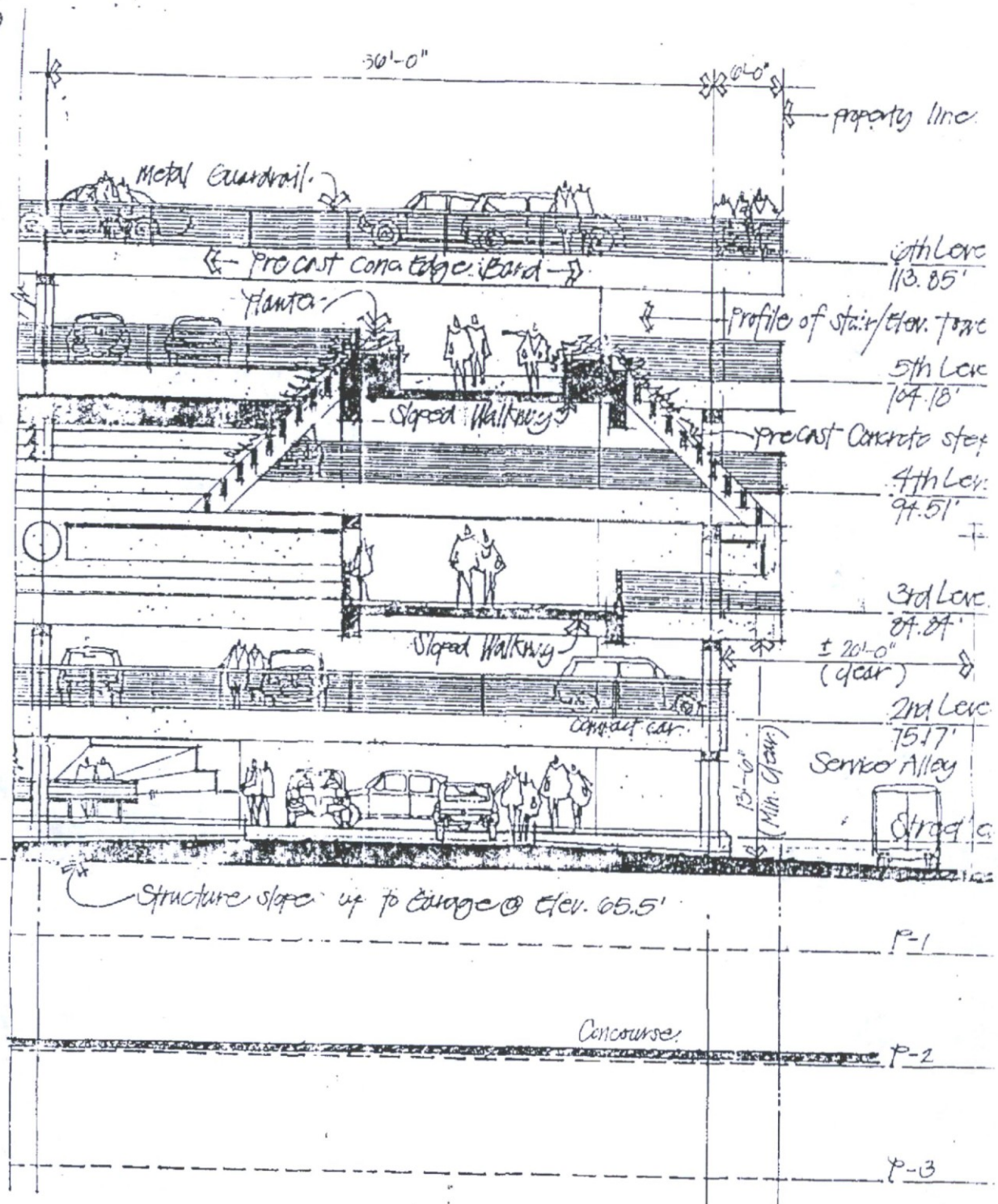


Parking Structure  
 Partial Section @ Ramp on Entry  
 1/8" = 1'-0"  
 EXHIBIT K



Parking Structure  
 Partial Section @ South Alley  
 1/8" = 1'-0"  
 EXHIBIT L

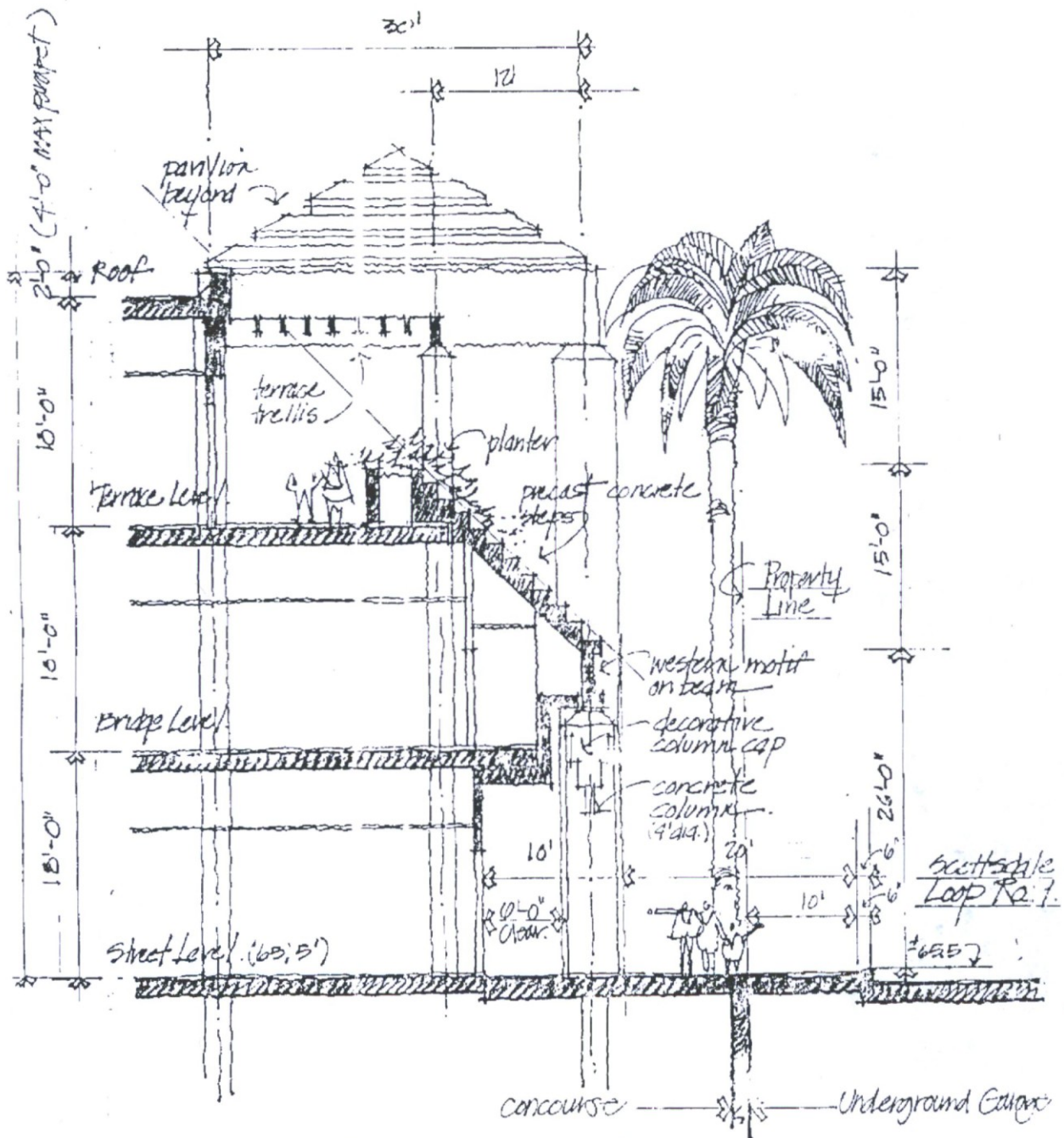




Parking Structure

Section @ Bridge Looking Toward Parking

1/8" = 1'-0"



Galleria Building  
Partial Section @ Loop Road  
1/8" = 1'-0"

PRELIMINARY

EXHIBIT 17

SEP 11 1987



**MARQUEE  
LEGISLATIVE DRAFT OF  
DEVELOPMENT STANDARDS**

**Sec. 5.3004. Use regulations.**

**ALL USES ALLOWED IN THE PBD DISTRICT**

**Sec. 5.3006. Property development standards.**

**B. Density, Gross Floor Area Ratio (GFAR), and Building Height Maximum.**

1. Density and GFAR maximum are shown in Table 5.3006.B.
2. The building height maximum is shown in Table 5.3006.B., except as provided in Subsection 5.3006.B.3.
3. The additional height regulations of Article VII. shall not apply.

<b>Table 5.3006.B. Density, Gross Floor Area Ratio (GFAR), and Building Height Maximums</b>				
Development Type	Building Height Maximum <sup>(1)</sup>	GFAR Maximum without Bonus(es)	GFAR Maximum with Bonus(es) <sup>(2)</sup>	Density Maximum (per acre of gross lot area)
Type 3	84 feet 150'-0"	1.4	2.0-2.38	50 dwelling units
<b>Notes:</b> 1. <del>Inclusive of all roof top appurtenances.</del> <b>MEASURED FROM DATUM LINE AT 1'-0" ABOVE THE AVERAGE TOP OF CURB ELEVATION EXCLUDES ROOFTOP APPURTENANCES.</b> A. <b>MAXIMUM HEIGHT FOR ROOFTOP APPURTENANCES: 6 FEET.</b> B. <b>MAXIMUM COVERAGE FOR ROOFTOP APPURTENANCES: 20% OF THE ROOFTOP.</b> C. <b>MINIMUM SETBACK FOR ROOFTOP APPURTENANCES: 15 FEET FROM ALL SIDES OF THE BUILDING</b>  2. <b>See Table 5.3008.B.</b>				

**C. Setbacks from public streets, except alleys.**

1. The minimum setback from public streets (except alleys) is shown in Table 5.3006.C. The setback is measured from the back of curb.

<b>Table 5.3006.C. Minimum Setback for Buildings Adjacent to Public Streets, except alleys</b>	
Street	Minimum Building

	Setback
North Scottsdale Road in Type 3 Area	40 <b>25</b> feet
<b>ALL OTHER PUBLIC STREETS AND PUBLIC STREET SEGMENTS IN THE TYPE 3 AREA</b>	<b>14 FEET 5 INCHES</b>
Note: See the Downtown Plan Urban Design & Architectural Guidelines for locations of the public streets and setbacks above.	

2. The adjustment of front yard requirements in Article VII. does not apply.

D. *Setbacks from major intersections.*

1. On each corner of an intersection designated as an Old Town Major Intersection in the Downtown Plan, the property owner shall provide at least 2,500 square feet of open space at grade and up to a height of 30 feet. The open space shall be located within 70 feet of the intersection of the property lines at the corner. Those major intersections include:
  - a. East Camelback Road and North Goldwater Boulevard.
  - b. East Camelback Road and North Scottsdale Road
  - c. East Indian School Road and North Goldwater Boulevard.
  - d. East Indian School Road and North Drinkwater Boulevard.
  - e. East Second Street and North Goldwater Boulevard.
  - f. East Second Street and North Drinkwater Boulevard.

E. *Setbacks from Single-family Residential districts shown on Table 4.100.A., or the portion of a Planned Community (P-C) with an underlying zoning district comparable to the single-family residential districts shown on Table 4.100.A., or any Planned Residential Development (PRD) District.*

1. The minimum setback is:
  - a. Ten feet from a single-family residential district shown on Table 4.100.A., or the portion of a Planned Community (P-C) with an underlying zoning district comparable to the single-family residential districts shown on Table 4.100.A., or any Planned Residential Development (PRD) District.
  - b. Ten feet from an alley that abuts a property zoned with a single-family residential district shown on Table 4.100.A., or the portion of a Planned Community (P-C) with an underlying zoning district comparable to the single-family residential districts shown on Table 4.100.A., or any Planned Residential Development (PRD) District, measured from the center of the alley.
  - c. Exception. The setback from a single-family residential district shown on Table 4.100.A., or the portion of a Planned Community (P-C) with an underlying zoning district comparable to the single-family residential districts shown on Table 4.100.A., or any Planned Residential Development (PRD) District, shall not apply to properties abutting the Arizona Canal.
2. Walls and fences up to a height of eight (8) feet are allowed on the property line, or within the required setback above, if the wall or fence is at least ten (10) feet from the center of an alley.

F. *Building location.*

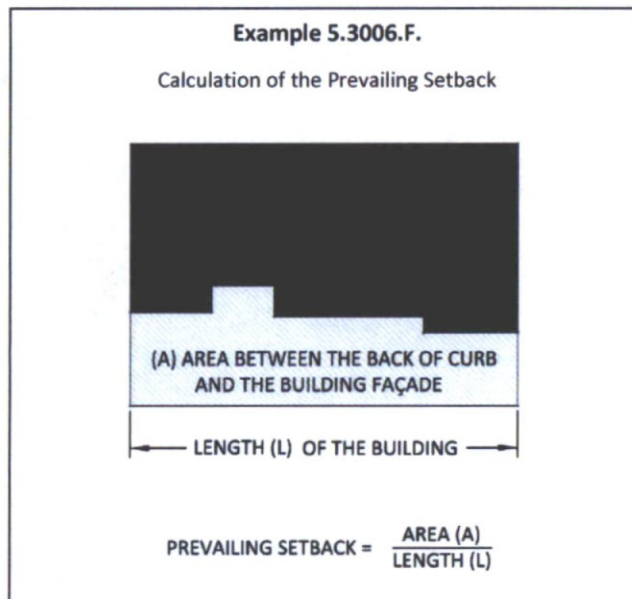
1. A building adjacent to a public street (except alleys) shall be located as follows:



- b. In a Type 2 Area, a Type 2.5 Area or a Type 3 Area, at least twenty-five (25) percent of the:
  - i. Length of the building façade shall be located at the minimum setback;
  - ii. Length of a building façade at grade and up to a height of ~~thirty (30)~~ **FORTEEN (14)** feet shall be set back at least ten (10) additional feet; **COLUMNS AND CANOPIES ARE EXCLUDED AND MAY BE LOCATED WITHIN THIS ADDITIONAL SETBACK** and
  - iii. Area of the building façade at grade and up to a height of thirty (30) feet shall be located at the minimum setback.
2. In a Type 2 Area, a Type 2.5 Area, or a Type 3 Area, a building with a building façade length of two hundred (200) feet or more shall be located to achieve a prevailing setback shown in Table 5.3006.F. The building façades on a corner lot are calculated separately, and not added together.

Table 5.3006.F. Prevailing Setbacks for Buildings Adjacent to a Public Street (except alleys)	
Street	Prevailing Setback
All other public street and public street segments	Between <del>25 and 35</del> <b>14</b> <b>FEET 5 INCHES</b>

3. The prevailing setback **(14'-5")** is equal to the area between the back of curb and the building façade, divided by the length of the building, as shown in Example 5.3006.F.



**G. Private outdoor living space.**

1. All dwelling units shall include private outdoor living space located beside the dwelling unit.

2. Each private outdoor living space shall be at least six (6) feet deep and sixty (60) square feet in area.

H. *Stepbacks.*

4. Property in a Type 3 Area not described above: ~~The stepback plane shall incline at a ratio of 2:1, beginning forty five (45) feet above (i) the minimum setback from the public street (except alleys), and (ii) all other property lines.~~ **ADJACENT TO A MAJOR ARTERIAL, PORTIONS OF BUILDINGS THAT ARE GRETER THAN 60 FEET IN HEIGHT MUST PROVIDE A MINIMUM 10-FOOT STEPBACK FOR 50 PERCENT OF THAT PORTION OF THE BUILDING. PORTIONS OF THE BUILDING GREATER THAN 80' IN HEIGHT MUST PROVIDE A MINIMUM 10-FOOT STEPBACK FOR 50% OF THAT PORTION OF THE BUILDING.**
6. If there is a conflict at the intersection of the stepback planes, the more gradual slope controls.

I. *Exceptions to building location, setback, prevailing setback and stepback standards.*

1. As outlined in Subsection 5.3006.I.2 through 5.3006.I.4 below, and except as provided in Subsection 5.3006.I.9. below, certain exceptions to building location, setback and stepback standards are allowed if the Development Review Board finds the exceptions conform to:
  - a. The Downtown Plan and Downtown Plan Urban Design & Architectural Guidelines; and
  - b. The sight distance requirements of the Design Standards and Policy Manual.
2. Subject to design approval by the Development Review Board, the following exceptions to building location, setback and stepback standards are allowed:
  - a. A maximum of five (5) feet for cornices, eaves, parapets and fireplaces.
  - b. A maximum of ~~seven (7)~~ **TEN (10)** feet for canopies and other covers over sidewalks, balconies and terraces.
  - c. Balcony walls and railings with a maximum inside height of forty-five (45) inches.
  - d. Uncovered balconies, uncovered terraces and patios at and below grade.
  - e. Covered sidewalks and uncovered terraces directly above a sidewalk.
3. Subject to design approval by the Development Review Board, in a Type 2 Area, a Type 2.5 Area, or a Type 3 Area, a maximum fifteen (15) feet exception to stepback and setback standards above the first floor (not specified in I.2. above), is allowed for projections that:
  - a. Are less than fifty (50) percent of the length of the segment of the building façade where the projections occur; and
  - b. Are less than thirty-three (33) percent of the surface area of the segment of the building façade where the projections occur.
4. Subject to design approval by the Development Review Board, an exception to the stepback standard is allowed for stairwells and elevator shafts.
5. The minimum setback from public streets (except alleys) shall be equal to the average prevailing setback of all buildings on the same frontage if forty (40) percent or more of



the existing buildings on the frontage are closer to the curb than the requirement of Table 5.3006.C.

6. The prevailing setback of a building with a building façade length of two hundred (200) feet or more shall be between five (5) feet and fifteen (15) feet greater than the average of the prevailing setbacks of all existing buildings on the same frontage, if forty (40) percent or more of the existing buildings on the frontage are nearer the curb than the requirement in Table 5.3006.F.
7. The minimum setback from public street (except alleys) shall be equal to the average prevailing setback of all buildings on the same frontage, but in a Type 2 Area, a Type 2.5 Area, or a Type 3 Area, not less than sixteen (16) feet.
8. The prevailing setback of a building with a building façade length of two hundred (200) feet or more shall be between five (5) feet and fifteen (15) feet greater than the minimum setback.
9. Exceptions to setback or stepback standards are not allowed:
  - a. To cross a property line; however, exceptions that encroach into the public street may be allowed, subject to the Scottsdale Revised Code.
  - b. On the side or rear, where the property line abuts a single-family residential district or an alley that abuts a single-family residential district shown on Table 4.100.A., or that portion of a Planned Community (P-C) with an underlying zoning district comparable to the single-family residential districts shown on Table 4.100.A., or any Planned Residential Development (PRD) District; however, a maximum five (5) feet exception to the stepback standard is allowed for stairwells, and elevator shafts, mechanical equipment and related screening, chimneys, parapets, and ridges of sloped roofs. This requirement does not apply to properties abutting the Arizona Canal.
  - c. To increase the building height maximum.
10. Where the building location requirements in Subsection 5.3006.F.1. above can not be met due to the location of the street line, the following shall apply:
  - a. In a Type 1 Area, at least fifty (50) percent of the:
    - i. Length of the building façade shall be located at the street line; and
    - ii. Area of the building façade at grade and up to a height of thirty (30) feet shall be located at the minimum setback.
  - b. In a Type 2 Area, a Type 2.5 Area, or a Type 3 Area, at least twenty-five (25) percent of the:
    - i. Length of the building façade shall be shall be located at the street line;
    - ii. Length of a building façade at grade and up to a height of thirty (30) feet shall be set back at least ten (10) additional feet; and
    - iii. Area of the building façade at grade and up to a height of thirty (30) feet shall be located at the minimum setback.

J. *Shaded sidewalks.*

1. The property owner shall provide shaded sidewalks that conform to the Downtown Plan Urban Design & Architectural Guidelines, subject to Development Review Board approval.

K. *Signs.*

1. The provisions of Article VIII. shall apply.

L. *Off-street parking.*

1. The provisions of Article IX. shall apply, except as provided below.
2. Vehicle parking is prohibited in the required setback specified in Table 5.3006.C.
3. The underground portion of a parking structure may be built to the property line.
4. A development with dwelling units that is required to provide:
  - a. Fifty (50) to two hundred (200) parking spaces for the dwelling units, shall provide at least ninety (90) percent of those parking spaces in a parking structure, podium parking, or tuck-under parking.
  - b. Two hundred one (201) or more parking spaces for the dwelling units, shall provide at least ninety (90) percent of those parking spaces in a parking structure, excluding podium parking and tuck-under parking.
5. The Development Review Board may approve an above-ground parking structure, podium parking and tuck-under parking adjacent to a public street if it finds that such parking conforms to the Downtown Plan and Downtown Plan Urban Design & Architectural Guidelines.

M. *Landscaping.*

1. The provisions of Article X. shall apply.